

THE TRIBUNAL RESUMED ON THE 1ST JULY, 2005 AS FOLLOWS:

CONTINUATION OF EXAMINATION OF SEAMUS PAIRCEIR

BY MR. HEALY:

CHAIRMAN: Good morning, Mr. Pairceir. And as yesterday,

Mr. Pairceir, we'll only go to a few minutes after

one o'clock, and if at any stage in the morning you care to

take a short break, just let me know.

A. Thank you very much.

MR. HEALY: Mr. Pairceir, do you remember yesterday I

referred you to Document 14 in Book 65, red Book 65. You

needn't turn it up if you don't want to. That was

A. It's Number 14 in red Book 65?

Q. Yes. It referred to a meeting you had with Mr. Bowen and

Mr. Fox; it's a note of Mr. Reid's.

And then the next document is Number 15, and that was a

note of Mr. Thornhill's, and concluded with the statement,

apparently attributed to you, that you had informed the

Minister for Finance of your intention to proceed with this

assessment as the last round of negotiations had resulted

in no progress.

And then you went on, as we see from further documents, to

phone Mr. Bowen to tell him you were going to issue the

C.G.T. assessment sorry, the DTT assessment, but that

the C.G.T. one would wait for a bit.

Now, around this time I think the Dunnes proposed to

approach the Minister again with a view to making some

progress, as they saw it, that might affect the situation,

and around that time your officials prepared documents for you to brief you in relation to any queries you might receive from the Minister, or to enable you, if necessary, to be briefed if you had to meet with the Minister.

And if you look at Document Number 19 in that book, you'll see that it's a memorandum, I think of Mr. Clayton, addressed to you, enclosing, as requested, presumably by you, a short briefing note on the proposed meeting with the Minister. Have you got that document?

A. Yes.

Q. If you look at that document, the little briefing note describes the case as "Bowens Case C.G.T."

Then there is a short history, in three paragraphs, of how the situation which led to the occasion of charge evolved, and then in paragraph 5, there is the Revenue view that the 1985 deed constituted a disposal of assets. And then in para 5, there is some rough calculations, approximate calculations of what the tax might be.

And at the bottom, "Conclusion", "Effectively, Revenue are not in any doubt as to the principle of liability. If the Bowens have such a doubt, the matter can be resolved via the normal appeal machinery."

That probably summarised Revenue view at that time.

The next document is a similar note now, I am going to pass over it, because it appears that you didn't have to proceed to meet the Minister. The documents are useful, I suppose, as summarising the Revenue view at that time.

If you go on to the next document, it's Leaf 21, you'll see that you appear to have phoned Mr. Christopher Clayton. I infer that this is Mr. Clayton's document, from the reference in the top right-hand corner, "CC/MS" he says: "The Chairman phoned. Mr. Bowen did not see the Minister, and the Chairman phoned him telling him that he proposed to have the C.G.T. assessment made."

And this was apparently around the 11th November, that this note was made, referring to a telephone conversation of the 10th.

Now, you gave certain instructions at this point as to how the assessment should be handled, recommending, I think, a courtesy letter first, followed by the formal Notice of Assessment. And if you go on to, I think, the next document, you'll see the courtesy letter of the 24th November, 1986, addressed to Mr. Oliver Freaney. And in very broad terms, it sets out the basis of the calculation of the gain, applies indexation at 4.14, makes an allowance for expenses, and arrives at a figure for tax at approximately in fact at precisely 38.8 million.

I don't know how much of this you can remember, but judging from these documents and the next document, it would appear that you were being informed of precise administrative steps on quite an intensive basis; you were informed of the courtesy letter, and you were informed of how it was proposed to issue the assessment.

Now, around the same time, or shortly thereafter, I

suppose, steps were being taken to finalise the moves the Revenue was making on Discretionary Trust Tax. And if you go to Document 24 you may have a shortened version of that document; the only part of it I want to refer you to is the final page, which is page 31; it's described at page 31. It's the last page in Leaf 24.

A. Yes.

Q. And at para 51, it says: "Conclusion: Taking into account all the factors discussed, the following value is suggested for assessment purposes, Discretionary Trust Tax 100 million." Do you see that?

A. Yes.

Q. And that is obviously a reduction from the top figures, or from any of the figures, I think, mentioned in the earlier papers; but presumably this was on the basis that, as we discussed yesterday, valuation of shares is not an exact science, and even when you have arrived at your final figures, out of an abundance of caution, it's probably sensible to build in a very real margin of error. And that seems to account for a figure of 100 million.

Now, if you go on to the next document, which is Leaf 25, you'll see this is a covering letter of Messrs Matheson Ormsby Prentice enclosing a printed version of a settlement that had been reached in writing between the counsel acting respectively for the Revenue, or for the Dunnes, and the Revenue, in the disposal of the Discretionary Trust Tax appeal on the 16th March 1987.

Now, if you look at the printed version of the settlement, you'll see that there is one heading for Bernard Dunne, and underneath that, a heading for Norah Dunne, because there were the settlement dealt with Discretionary Trust Tax at 1% and inheritance tax at 3% in the case of Mr. Bernard Dunne; and in the case of the late Norah Dunne, who had died only about a year previously, it also dealt with Discretionary Trust Tax and inheritance tax.

Now, the settlement embraced Norah Dunne's case, or the late Norah Dunne's case, although it appears no assessment had been issued in her case, from which it would appear that the Revenue, even though no assessment had been issued, were prepared nevertheless to negotiate the matter.

I think you were under the impression yesterday that Revenue wouldn't negotiate without an assessment, but I think this makes clear that they were; would that be right?

A. I don't quite know what we are talking about here.

Q. Well, let me just remind you

A. An assessment was made in the case of Bernard Dunne, but no assessment had been made in the case of Norah Dunne.

Q. Correct.

A. But part of the agreement on the appeal included Norah Dunne, the late Norah Dunne.

Q. Yes. So the assessment was based, for all the years embraced by the assessment, which went from 1984 up to 1987

A. Could I just comment on that?

Q. Sorry.

A. The matter before the appeal could only be an assessment; but the matter on the settlement, of course, could comprise any kind of liability.

Q. Of course.

A. I mean, I hadn't noticed that before. But I don't think anything hangs on it.

Q. No, not at all. I think you may have been under the impression that Revenue wouldn't negotiate without an assessment, but it seems that they were prepared to on this occasion.

A. No, that they couldn't go to appeal without an assessment.

Q. No, I think yesterday you were under the impression that the Dunnes I'm not sure anything turns on it that Dunnes wouldn't have been in a position to negotiate with you in 1985 when no assessment had been issued, but I think in fact there were quite extensive negotiations in 1985 and 1986 on C.G.T.; and from this document, it would appear there were negotiations in in the case of Norah Dunne without an assessment having been raised in her case, either.

A. If I gave the impression that there could be no negotiation without an assessment, I am sorry.

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

A. Well, it just isn't a fact. Why should I have an opinion on it?

Q. Now, this settlement, as I mentioned, covered a number of

years, and the same figure for valuation was used for every one of those years, from 1984 right up to 1987. But of course, as you will see from the bottom line of the settlement, a protection for Revenue was built in in that it was stated that all of this was without prejudice to liability for Capital Gains Tax.

Now, it would appear from the evidence that's been given that you were contacted to give your imprimatur to this settlement.

A. Yeah.

Q. And I don't know whether you remember it or not, but it seems reasonable that you would have been contacted, if only to be told of the basis upon which it was agreed to settle, and to get your okay for it?

A. I think that's more likely, and because I had been involved in some way with it, I think they were merely telling me. I mean, I wasn't going to dispute the valuation that they had agreed.

Q. Yes. Now, if you could just go to Document 30 for a moment. Here you have both a handwritten note and a typed version of the handwritten document. The handwritten document is a note of Mr. O'Cathain's

A. 30

Q. 30A.

A. At 30A, I have a note from John Reid to "Dear Mr. Bowen".

Q. If you look at the overhead if you look at the monitor, is that the document you are looking at?

A. No, at 30 three nought?

Q. 30A.

A. Oh, sorry, I was looking at 30. Yes.

Q. Now, it may be easier if you go to the typed version. This records a call from John Reid to Mr. O'Cathain "Their tax has not yet been paid. BD has arranged a meeting with the Chairman for the 27th" that's presumably the 27th April "John Reid wants to know what liability would be thrown up by 82 million value of the" then the note seems to stop.

That note is dated the 13th April 1987, and presumably it's based on something that you would have told Mr. Reid; wouldn't that be a reasonable assumption?

A. Yes.

Q. And what you told Mr. Reid was presumably based on a conversation you had with Mr. Bernard Dunne, or somebody else, fixing a date?

A. Probably with somebody else.

Q. So there must have been we know from other documents, which I can refer you to if you wish, but we know from other documents that this meeting was set up at the request of the Taoiseach. Do you want me to refer you to the other documents?

A. Well, it would help me.

Q. If you go to Document Number 33, that's another note of Mr. O'Cathain's.

A. Yes, I see. That's the and

Q. It says in the third line of writing, it says: "He" meaning the Chairman "had met BD and Mr. Fox recently at the request of An Taoiseach." And that seems to be the meeting that you had on the 27th April, presumably, and it's from that that I am inferring that prior to the 13th April, you must have had a meeting with the Taoiseach.

A. What number is that? 30

Q. If you go back to 30A?

A. Yes, that's the 14th April.

Q. Yes.

A. And then

Q. Well, if you look at the first note, it's the 13th April; do you see that? And that seems to refer to the meeting that had been arranged between you and Mr. Dunne, and as we know, Mr. Fox also, for the 27th. But if that information was provided to Mr. O'Cathain on that date, it was presumably provided to Mr. Reid by you, either on that day or perhaps shortly before that day.

A. Yes, for a meeting on the 27th April.

Q. Yes. But as that note is dated the 13th April, the information conveyed to Mr. Reid must have been conveyed to him either on that day or shortly before that day?

A. Yes.

Q. I think you deal with this in your statement. And if I can just refer you to the relevant part of your statement.

It's the under the first heading or your memorandum.

The heading is "Meetings between Mr. Pairceir and

Mr. Bernard Dunne in 1987." Have you got that?

A. Is that in the other book?

Q. It is, yes, or you may have it loosely, because it's in the blue book it's in the blue book at Leaf 11.

A. I have that.

Q. And I'll just read from it: "Mr. Pairceir first met Mr. Bernard Dunne on the 5th May 1987." Now, as I mentioned to you, I think I'm not suggesting for one moment that that's your memory; that's based on information provided to you by the Tribunal, at a time when the Tribunal may not have been armed with as much information as it's now armed with. And it would seem to follow that at the time, the Tribunal was incorrect, and the correct date must be the 27th April, 1987.

A. Yeah, I see that, because the 5th May I get from Mr. O'Cathain's note.

Q. That's correct.

A. And that says that I had met.

Q. Yes, that you had met him recently.

A. Well, the 5th May is an error for 27th April.

Q. Yes. "The meeting with Mr. Dunne was arranged at the request of Mr. Charles Haughey. Mr. Pairceir does not remember when Mr. Haughey asked him to meet Mr. Dunne and does not recall the terms of that request, apart from Mr. Haughey asking him to meet Mr. Dunne. During the period following the change of Government, Mr. Pairceir attended many meetings chaired by Mr. Haughey. Also, the

Taoiseach's committee dealing with the proposed IFSC was set up and met weekly in the Taoiseach's Department under the chairmanship of Mr. O'hUiginn. Mr. Pairceir was a member of the IFSC meetings. It was probably after one or other of these meetings that Mr. Haughey made his request.

Mr. Pairceir doubts very much that there was anyone else present when Mr. Haughey's request was made to him."

Now, you mentioned that during the period following the change of Government, you had many meetings with Mr. Haughey, and you mention also the Taoiseach's committee on the IFSC. Now, to judge from the documentation we have here, your meeting with Mr. Haughey must have preceded the 13th April of 1987, although it could have happened on that day as well, I suppose.

A. Is there something important about this that I should

Q. I am trying to establish precisely when it happened. I am trying to find out as much as I can about the date of it.

A. Well, I just don't remember.

Q. Well, I'm simply asking you to comment on my thought process. It must have happened it seems reasonable to infer that it happened prior to the 13th April of 1987.

A. That's because of the note, is it?

Q. Yes, because the note.

A. That's okay, yeah.

Q. And the change of Government occurred on the 10th March of 1987. So it occurred, presumably, sometime between the 10th March of 1987 and the 13th April of 1987.

A. Yes.

Q. I don't know when the IFSC committee started, but you may be able to help me on this. Do you know if that was an initiative that was kick-started, if you like, shortly after the change of Government, or did it take a while to get going?

A. Certainly it occurred after the change of Government because it was the Government coming in that decided to

Q. Promote it?

A. create the financial services business within the Custom House docks area.

Q. Well

A. So then it is likely that Mr. Haughey spoke to me after one of these meetings, shortly after he came into office, when all of the people involved with the Exchequer and the economic position were meeting fairly regularly. So my reference to the Financial Services Committee is probably is obviously wrong.

Q. Well, in any case, it may be that we can't be completely we can't be any more precise than this: that it happened sometime within the first month after the change of Government?

A. Yes.

Q. Now, you say that you do not recall the terms of the request, other than that you were asked to meet Mr. Dunne?

A. That's my recollection of it, yes.

Q. It seems to be simply a request to facilitate a meeting.

A. Yes.

Q. Now, you had you had already met Mr. Dunne or you had met Mr. Fox and Mr. Bowen many times prior to this; isn't that right?

A. Yes, there were a lot of meetings which started in 1985.

Q. I think in 1985 and 1986, in terms of recorded meetings, obviously one can't be sure about recorded meetings and contacts on the telephone, there were at least ten. There may have been other ones, according to Mr. Bowen; it may be that you and Mr. Bowen wouldn't have recorded contacts that were not of any huge significance. In the course of those various contacts over 1985 and 1986, you had made it clear to the Dunnes that they would have to face up to their liabilities; isn't that right?

A. Yes.

Q. I'm quoting from one of the notes. That 120 million was the bottom line, I think is what another note says. And I think you recorded that the Minister himself, Mr. Dukes, had asked you to negotiate with the Dunnes; isn't that right?

A. Well, he certainly asked me to speak to them, and I see from the papers that I reported back to him.

Q. Yes. But I think, judging from one of Mr. Bowen's notes, which we can refer to in a moment if necessary, Mr. Bowen records Mr. Dukes records you as saying "The Minister asked me to negotiate." Which would appear to suggest the Minister said, "Negotiate with them; see what you can do."

You were negotiating; we know that.

A. I wasn't so much negotiating with him as with the officials, and myself chairing the meetings. We were exploring the situation which had arisen.

Q. I think apart from that meeting, you met them on your own all the time, didn't you? Apart from the first big meeting in February of 1985, or March of 1985, I think most of the meetings were on your own, and the telephone contacts were obviously just between you and Mr. Bowen.

A. I think that the meeting with Mr. Dunne and Mr. Fox I dealt with by myself. But I think the earlier meetings which had occurred in 1985, when the situation was only emerging and we had no prior knowledge of it, I think those meetings were attended by officials as well as myself.

Q. Certainly it would appear that the meeting in March of 1985 was attended by a number of officials.

A. Yeah.

Q. But it doesn't appear from the records that the meetings after that date were in fact attended by officials. It would appear that you either met Mr. Bowen and Mr. Fox on their own, or you obviously had one-to-one telephone conversations with Mr. Bowen.

A. Well, I honestly don't know, but if the papers show that, I don't dispute it. There is no reason why I should dispute it.

Q. And you had made it clear, I think to Mr. Bowen and to the Minister, that you had waited too long, to use one of the

other quotations from the notes, "indefensibly long"; it was time to get this thing moving, seems to be the message you were conveying to the Dunnes at the end of 1986.

A. Well, I explained that yesterday about my reasons for delay, and I can understand them saying that "Well, I can't wait any longer", and all the rest of it is dressing in the sense that but

Q. They weren't saying it; you were saying it to them that you wouldn't wait. You couldn't wait any longer.

A. Yes, I understand that. But I explained yesterday the reasons why I was delaying sorry, that was probably later on. But at any rate, okay, I delayed.

Q. But not only had there been a delay for reasons which I think you have explained, and which are also explained in the papers. You made it clear to the Minister and to the Dunnes in 1986 that you weren't going to wait any longer, and indeed, you didn't; you issued the assessment at the end of November of 1986. That would have been the state of play as of that time?

A. That's right, yeah. I told them.

Q. Yes. And you told them that 120 million was the bottom line.

A. Well, I'm sure I did.

Q. Well, judging from Mr.

A. These are from the assessments that have to be corrected, is it?

Q. Pardon?

A. That is the basis on which the assessments were made.

Q. Yes. Now, from what you are saying in your statement, it seems that if Mr. Haughey said nothing else to you other than "Meet Mr. Dunne", he was simply asking you to facilitate a meeting, if that's all he said to you, "Would you meet Mr. Dunne?"

A. Yes. That would not be untypical of the way Mr. Haughey did business.

Q. But you can't remember the meeting, but are you surprised, even now, when you look at the extent of the contacts during 1986, that either Mr. Dunne or Mr. Fox would have needed to go to the Taoiseach, to the highest political authority in the land, to facilitate a meeting with you?

A. I really can't answer that. I don't know.

Q. But you had been meeting and negotiating with Mr. Bowen, Mr. Fox, for two years without success, admittedly.

Would you not agree with me now that you must have been surprised even then to be asked will you meet Mr. Bowen and Mr. Fox, to be asked by the Taoiseach will you meet Mr. Bowen and Mr. Fox, as if in some way you had refused to meet them or you were so aloof you wouldn't deal with them?

Does it not seem strange that someone would go that high up, as it were, merely to facilitate a meeting that they could have arranged themselves at the end of a telephone?

A. Well, no. Obviously did we establish that I was already meeting Mr. Dunne before the Taoiseach

Q. It's not clear. It doesn't seem that you were.

A. As far as I remember the distinction is that I had been meeting with the representatives of the Dunnes Trust and the Trustees, but that what Mr. Haughey asked me to do was to meet Mr. Dunne himself.

Q. And was there some reason why you wouldn't have met Mr. Dunne if Mr. Fox or Mr. Bowen had asked you?

A. Of course not.

Q. And what I'm asking you to consider is whether, looking back on it, you'd be surprised that anyone would have thought that when you were dealing so intensively with the case up to this period, that you wouldn't have met Mr. Dunne for some reason; for some reason, it would have involved invoking the Taoiseach?

A. I don't see how the Taoiseach is excluded from being invoked.

Q. Does it seem again, looking at it now that invoking the authority of the Taoiseach to set up a meeting, which, to judge from the papers, could have been set up by any number of people on the Dunnes side

A. But it wasn't invoking the authority of the Taoiseach. It was asking the Taoiseach, presumably as a public representative as well as being Taoiseach, but the Taoiseach had no jurisdiction over my activities.

Q. No. But why would anybody go and ask him to have a meeting with you that you must agree you could have organised yourself on a phone call from Mr. Fox or Mr. Bowen?

A. I wouldn't have questioned why the Taoiseach would ask me

to do something like that, or anything else, really.

Q. Now, we'll come back to it later on; we'll just look at one or two other documents.

Around that time, the Discretionary Trust Tax was being collected, and the appeal on the 16th March went ahead on the settlement, as we have discussed a moment ago. Now, we know that you were asked questions about the fact that interest was waived in relation to that Discretionary Trust Tax. And I'll just take you to the relevant part of your Memorandum.

It's at page 2, para 5.

It says: "Mr. Pairceir has examined the papers enclosed with the Tribunal's letter of the 21st March, 2005, including the copy of Mr. Reid's manuscript note of the 15th May 1987. It would appear that at a meeting on the 25th May 1987, Mr. Pairceir conceded that $\frac{1}{2}$ 62,450 interest accrued after the date of the settlement on the 16th March, 1987, might be forgone. Mr. Pairceir does not recall the circumstances, but it was probably because the total interest payable up to the date of the settlement was already $\frac{1}{2}$ 405,287. It was not uncommon for the Revenue to concede some interest in arriving at a settlement of liabilities. During Mr. Pairceir's time as accounting officer, the matter of all accrued interest not being collected was raised at the Public Accounts Committee, and as a result, a memorandum dealing with the issue was submitted to the Attorney General. The authority for the

practice was claimed to be the provision, which is in every Finance Act, placing the taxes and duties imposed under the care and management of the Revenue Commissioners. The Attorney General's opinion agreed broadly with the Revenue view." You have already referred us to two other provisions, I think one of which is Section 44 of the C.A.T. Act of 1986, which would seem to be relevant as well.

"After an interval of nearly 18 years you do not remember having agreed to waive interest in this instance, nor why. The only thing that strikes you is that the economic and budgetary positions were extremely bad in 1986 and 1987, and it may be that you hoped that forgoing the interest accruing after the date of the settlement might have led to payment. According to the documents available to the Tribunal and furnished to you, payment of the tax and interest in the sum of 3.564 million was made by Oliver Freaney & Co on the 25th May 1987."

Now, just to look at this again, if I could just ask you to go to Document 29 in the red book.

A. Yes.

Q. This is a letter from Touche Ross solicitors, signed by Mr. Liam Hogan, but in fact from Frank Bowen to Mr. John Reid, on the 24th March 1987.

"Re: Discretionary Trust Tax dated 16 March 1964."

"Dear Mr. Reid.

"Thank you for your letter of the 20 March setting out the

details of the tax and interest in the above matter.

"In relation to the late Norah Dunne, under paragraph 2(a), I noticed that interest is calculated to run from the 9 March 1986 to 16 March 1987, in effect from the date of death right up to the date of agreement. While I would accept that this is in accordance with the agreement of the 16 March, I think it is perhaps a little bit unfair that the interest runs from the precise date of death, and I was wondering if consideration could be given to a reasonable time-frame within which to complete the return and make a payment in such circumstances."

So it's Mr. Bowen asking for a waiver of interest.

Then on the 26th, it seems Mr. Reid replied, if you look at Document Number 30.

"Dear Mr. Bowen,

"I refer to your letter of the 24 March 1987.

"The claim for the inheritance tax in connection with the death of late Norah Dunne was first notified to the Trustees on the 7 May, 1986, and a further request to lodge a return was made in a letter dated 8 September 1986. In another letter, dated 7 January 1987, the outstanding claims were detailed, and the position as to interest charges was set out in full.

"The statutory position is that interest is payable from the valuation date unless tax is paid within three months of that date. As regards the tax and interest due in connection with the death of the late Norah Dunne, the

Revenue Commissioners did not consider it appropriate to depart from the statutory position which, as you point out, now forms part of the agreement of the 16 March, 1987."

Now, it seems that sometime in May of 1987, you agreed to waive that interest. And you say that you waived it because you felt you had a discretion to do so on the basis of the principles set out in your letter; isn't that right?

A. Yes.

Q. Just the one thing I want to try to clarify is this: As I understand it, Revenue do have a power, or a discretion, to waive interest; and indeed, as you pointed out yesterday, even to compound tax, especially, presumably in the context of a valuation issue where you may have raised tax on the basis of one valuation and may begin to doubt the valuation. But I just can't see how that discretion applies to the case of a settlement where Revenue has agreed that tax will be paid on a certain basis, that interest will be paid on a certain basis on a certain date, and in order to achieve a compromise, which presumably has considerable benefits for the taxpayer, the taxpayer agrees to pay that tax and that interest from those dates.

Now, in that situation, did you not feel that it was a bridge too far to be asking for another concession?

A. Well, since I gave the concession, I obviously didn't. But what I would say is that a number of matters. On the date that I gave this concession, the tax was paid. So there is something to do with a concession being given on

the basis of an imminent payment. A number of things would have influenced me in that this obviously has to be speculation, because I don't actually remember the incident, but I have examined the figures carefully and that already interest had accrued first of all, because of the appeal and because of the difficulties of valuation, the liabilities under the one-off 3% and two years for April 1986 and April 1987 of the 1% had all come together, so that which should have been coming on an annual basis, but for various reasons they had come together, and interest had already accrued to the extent of over $\frac{1}{2}$ 400,000. And also, on the 27th, which is two days later, a further $\frac{1}{2}$ 41,000 would come down on top of them. So that though I don't remember the incident, I quite understand that to get the payment, such a substantial and unique payment into Capital Acquisitions Tax, that I, for some reason or other, did this deal.

Q. And were you conscious of the fact that you were varying the agreement that had already been hammered out on the day of the appeal?

A. I was varying the consequences of the agreement, but I wasn't really varying the agreement stood.

Q. But it didn't stand. You waived the interest due under it.

A. Yes, I waived the interest, yes.

Q. But the interest was part of the agreement.

A. Yes.

Q. And let me put it this way: While I agree that everything

is relative, it was a huge amount of money, IR£65,000?

A. 62.

Q. £62,000 Irish?

A. Of course it was. So was 3.5 million enormous money into the Exchequer in very difficult times.

Q. But obviously Dunnes Stores thought 62,000 was an awful lot of money, since they were prepared to try to vary an agreement to avoid paying it?

A. I'm sure they did. But a very small amount of money relative to the total, 3.6 million.

Q. I think you'd agree with me that it wouldn't have been acceptable for to you try to vary that agreement on that day in such a way as to favour the Revenue; I think you'd have been told under no circumstances would Dunnes Stores contemplate any variation of the agreement in such a way as to increase the valuation?

A. I would think myself that the basis of the agreement was really the valuation. The other questions of interest and when various liabilities arose were facts following that agreement. All of the including the payment of interest. The question of the payment of interest when the agreement was being signed was not subject to being an agreement. It was there because it was statutory. It followed the event.

Q. Let's try and make this simple, Mr. Pairceir. There is a very straightforward agreement here which involves the payment of money. Were Dunnes saying to you, "Look, you

are not going to get your money under the agreement unless you give me another concession; if you do, I'll pay you now"? Is it as simple as that? Were you being put up against the wall and told "You won't get your 3 million unless you let me off the 62,000"?

A. I would think not. I doubt very much if

Q. Mr. Reid had written to explain to Mr. Bowen that he was stuck with the agreement. Mr. Bowen himself knew he was stuck with the agreement. He said, "I accept I am stuck with the agreement." He was asking for a concession.

A. I keep telling you that the agreement was basically on the computation of the value. All of the other matters in the agreement followed from the statutes as they were then. I departed from the statute because I felt that I had the power, and because I think the circumstances warranted it, and because whatever I did resulted in the payment of 3.6 million, which was very important in May, as I was explaining yesterday.

Q. Are you suggesting that Dunnes wouldn't have been good for it if you invoked your much stronger powers to go after them for that money?

A. How?

Q. Well, you could have sued them for it, couldn't you?

A. How long would that take me in 1987?

Q. Is that what they were saying to you?

A. No.

Q. "Sue us"?

A. No, that's what I am saying. What I'm saying our experience at that time was that there was mounting arrears of tax

Q. I appreciate that.

A. Yes, and that, for instance, the County Registrars outside of Dublin were totally ineffective, and shortly after that, Revenue Sheriffs were introduced. What I feel about it I had spent about ten years in the Collector General's Office, face-to-face with collecting problems, so that I had experience in which I would do a deal to get the money.

Q. But you had done a deal to get the money, Mr. Pairceir. You had done that deal on the overhead projector. Why did you do another deal? Can I just ask you, was it because you were put under pressure by Dunnes?

A. I have answered that.

Q. But did you feel that Dunnes were, in other words, saying to you, "You are not going to get money from us"? Were they just a very big taxpayer saying, "We owe you 3.4 million, and you are not going to get it unless you give us a cut"?

MR. O'NEILL: 2.7, not 3.5.

Q. MR. HEALY: Is that it? Was it something like that? It's understandable, but was it something like that?

A. I doubt very much if it was that. But there must have been I just didn't invent it. But certainly these are my these were the reasons that I had in my mind. I understand that.

Q. I wouldn't, and I don't think anyone would criticise you for buckling under pressure like this. But was there pressure, was there an apprehension, a very real apprehension on your part that "They're not going to pay"?

A. No,

Q. Well, then, why did you give them the concession?

A. To speed up the process.

Q. Were they saying, "We are going to carry the long day"?

A. I don't know. But I have explained it.

Q. I can understand why all of those pressures might have acted on your mind. I can understand why you might have said, "Look, if we don't get the money from them today, they are going to carry the long day; we are going to have to wait to get it." They had a big stick hanging over you, with a cheque for 3.5 million, and they were saying, "You won't get the cheque unless you give us 64,000 off or 62,000 off". Was that what it was, or was it some other pressure being applied to you?

A. There certainly was no other pressure being applied to me. But there was something going on by way of negotiation, in which I was trying to get the cheque from them, because of the reasons I explained, before the 27th May, when the problem was going to get worse.

Q. That seems to be correct. There was some problem; you were trying to get a cheque from them. What I'm trying to work out is why you didn't simply say to them, "You have an

agreement; you stick by it". I can well understand why you mightn't have, because you wanted the cheque; but I am suggesting to you that this was either because some pressure was put to bear on you by some third party, or some extraneous pressure, or alternatively Dunnes applied the pressure because they were big taxpayers.

A. I think that what must have occurred was that there must have been some kind of I wouldn't have invented the idea of forgoing the interest which had accrued after the date of the agreement. But that there must have been some attempt not unnaturally, when they were going to fork out 3.6 million.

Q. What Mr. Bowen said is that they didn't regard the agreement as binding until they handed over the cheque. And the way he put it in evidence here is, "We are not lawyers; we are retailers. We are going to wait until the last minute to see, if you like, the last drop of lemon juice out of the lemon". Is that what it was?

A. Do you mean that had I that attitude?

Q. No, had they that attitude, according to you? Is that the attitude you feel they had?

A. I don't think they had that kind of extreme attitude, but they were they were they would behave like most people would behave, business people would behave.

Q. I'm not sure that most business people would agree with the notion that having entered into an agreement, you then try to change it. I don't know that most business people in

Ireland would agree with that, Mr. Pairceir. There was an agreement.

MR. O'NEILL: Mr. Chairman, I am sorry to interrupt; I know this isn't my witness. I think it's only fair to this witness that he should be reminded that the payment that was made included a prepayment of $\frac{1}{2}$ 800,000 worth of tax.

MR. HEALY: Yes, we had that interpretation.

Q. Could I go back now to Document 30, please, Mr. Pairceir.

A. Yes.

Q. Now, this brings me back again to where I was when we were trying to date your dealings with Mr. Haughey.

A. Yes. The April meeting.

Q. Yes. Now, if we look at Mr. O'Cathain's note of what he was told by Mr. Reid. "Call from John Reid, their tax has not yet been paid, BD has arranged a meeting with the Chairman for the 27th. JR wants to know what liability would be thrown up by the 82 million value of" and I presume that means of "the shares", or "the company".

And it goes on: "Another call from John Reid the next day." I think that's "Don Thornhill wants a note on the dividend Trustees position." That's another issue that arose at the settlement. "Based on the 82 million value in 1984, our claim for C.G.T. would now be 23.6 million as over."

That seems to be providing John Reid with the information he was looking for the day before; do you see that?

A. Yes.

Q. Now, it would appear that as of this date, Mr. Reid was asking Mr. O'Cathain, and we don't note what prompted Mr. Reid to do this, but Mr. Reid was asking Mr. O'Cathain what the tax would be if an 82 million value was ascribed to the shares.

A. Yes.

Q. This was a significant alteration in the position that obtained on the basis of the assessment, because you now had approximately a 40 million proposed reduction in the value of the shares and approximately a 12 million reduction in the amount of tax that would be payable. You accept those figures?

A. Yes, yes.

Q. Now, before I go on to the next document, which is a memorandum of the 5th May

A. By the way, that figure of 82 million, of course, is the figure that was agreed for sorry

Q. That figure had been agreed about a month earlier, six weeks earlier.

A. Yes. Thank you.

Q. That was the figure agreed for Discretionary Trust Tax, of course.

A. Yes, yes. And that was the that was the value of the shares.

Q. Yes.

A. So that an 82 million for Capital Gains Tax purposes would throw up a different kind of liability.

Q. It would, yes. But the original assessment was based on 120 million?

A. Yes, yes.

Q. Now, if you go to the document in Tab 32, this is another note of Mr. O'Cathain's, and says "Meeting with An Cathaoirleach arranged for 10.30am on Monday next.

Christopher Clayton and myself to attend, per CC, An Cathaoirleach, met BD and had a full and frank discussion."

So obviously a meeting this is a reference to the meeting you would have had about a week or so earlier.

"He" meaning, presumably, Ben Dunne "does not accept that there is a disposal, but would rather not gamble on the outcome, especially in view of the fact that this might take some years to resolve. An Cathaoirleach pointed out that Revenue believed there was a disposal and have to pursue it. Apparently BD would like to settle no indication of what figure might bring a settlement, only figure was that mentioned of 23.6 million as being our revised claim based on the 82 million market value of 1985."

A. Yes.

Q. Now, I want you to look at another folder. It's I think Number 66.

Now, in that memorandum I mentioned a moment ago, you recall that Mr. O'Cathain refers to 23.6 million as the only figure that had been mentioned whether it may have been the only figure mentioned in the course of the meeting

with Mr. Bernard Dunne or the only figure mentioned by

Mr. Clayton; it's not absolutely clear

A. Am I now on this Book 66?

Q. I am referring to the other memorandum I opened a moment ago, but I want you to stay with Book 66.

A. Is that this one? There are no typed copies of the notes.

Q. There aren't. I just want to remind you that the document we referred to a moment ago of the 5th May 1987,

Mr. O'Cathain's memorandum, refers to "Our revised claim of 82 million market value at 1985 and a figure of 23.6 million for tax."

A. Yes.

Q. Now, I don't know whether that expression "Our revised claim" is simply a casual way that Mr. O'Cathain had to describe maybe something not quite so formal, but do you recall a figure much, much lower than the original 38.8 figure being mentioned in the course of your first meeting with Bernard Dunne? You mightn't recall the details of it, but do you recall Mr. Dunne coming in with a figure much lower than the figure you had in mind?

A. At this stage the assessment had been made.

Q. The assessment had been made, yes.

A. And they were coming in about the assessment.

Q. They were coming in about the assessment, which apparently

A. Which was under appeal, or at least in dispute.

Q. Yes, which they wanted to settle, apparently?

A. Well, they wanted to discuss it.

Q. Well, according to the note, they wanted to settle it.

A. Well, yes, possibly. But at any rate, I understood that from Mr. Dunne and from the note that, though they disputed the liability, that he would that he would be prepared to settle at a lesser figure.

Q. If you look at that black folder I have given you, Number 66, and you go to Leaf 2. Leaf 2 is a number of pages of what appear to be working papers of Mr. O'Cathain for that day, the 5th May, 1987, the day of the memorandum where he refers to Mr. Ben Dunne wishing to settle.

A. Yes.

Q. Now, it's headed "Bowen Settlement" on the top left-hand corner

A. I don't think I have ever seen this before, have I?

Q. I doubt it, unless you got that book. We can take it slowly.

On the top left-hand corner there is the word "Mabhran", "memorandum".

A. Yeah.

Q. Followed by, it seems, a date, the 4th May of 1987; do you see that?

A. Yes.

Q. The end the last document of all those documents well, not the last one, in fact, but the last of the written pages, and then there are some figures, is dated the 5th. But if we start with the top left-hand corner,

which is dated the 4th May 1987. There is a note "Per CC BD wants to settle", which again reflects what's contained in the other memorandum "What can be offered".

Do you see that?

A. Is that on the first page?

Q. It's on the top left-hand corner of the first page.

A. Oh, yes.

Q. "Mabhran", then a date, 4th May. "Per CC BD wants to settle C.G.T. What can be offered." So it looks as if

Mr. O'Cathain has got a message to the effect that

Mr. Dunne wants to settle, and the question is, what can be offered. And then he is

A. Well, Mr. O'Cathain's note of the meeting with me on the 5th May

Q. Or the 11th May?

A. or the 11th May, records that I say that though they dispute liability, that Mr. Dunne is unwilling to embark on the possible long passage of litigation and that he was prepared to settle. Or at least that he was prepared to negotiate if it's possible not to settle.

Q. Then if you look at some of the working figures. You see market value on the left-hand side. Market value it looks like some date in 1984, 82 million. There may have been an earlier figure in there.

A. Yeah. That's page 6 and 7.

Q. Yes, but we may be slightly at cross-purposes. I want you to go back to the first page. It's also mentioned on the

first page.

A. On the first page behind Tab 2?

Q. On the first page behind Tab 2.

A. There are just two figures with a value of 82 million and then cheque for

Q. If you are looking if you look at the monitor, you'll see what I'm looking at. Are you looking at that?

A. Yes.

Q. It says "82 million could not be less". Do you see that?

A. Yes.

Q. "See recent C.A.T. figures." Something "for BT Bernard Dunne deceased, 1/21 reference shares, certified value at par, so disposal of ordinary shares does not require discounting". Do you see that?

A. Yes.

Q. Then underneath that, "Market value of the 6/4/74 5.5 million. Checking figures" something "There may be case for increasing this". Do you see that?

A. Yes.

Q. And it goes on, and I think Mr. O'Cathain eventually does carry out some calculations with a view to increasing the 5.5 million to 8 million, and the effect of that would be to reduce the tax from 23.69 million to 19.55 million. You will see that at on the third page of the document, at the numbered point, Point Number 5.

A. Yeah.

Q. Then if you just look above that point, Point Number 4:

"If it is not settled now, with the present Chairman, the family would face" something "long delay and uncertainty"

A. That's the point made by Mr. Dunne when he came in to see me.

Q. Were you anxious to settle, to think that Mr. O'Cathain notes specifically that if it wasn't settled with the present Chairman did you have an appetite for settlement at least at this time?

A. I certainly did not wish to ignore the possibility that we might have a settlement. The assessment was going to go to appeal, and there is no such thing as a certainty in these matters, and if Mr. Dunne or the Dunne Trustees were prepared to settle at a figure which would be acceptable to the Revenue and would protect the Revenue position by having a value forward for the final disposal, then I was prepared to discuss that. I think I was obliged to discuss that.

Q. If you just go on two more pages, then to a page I think the last of the narrative pages.

A. 5, is it?

Q. Yes. The last of the narrative pages.

A. Yes.

Q. It's headed "Continued" on the top left-hand corner.

A. Yeah.

Q. It says: "Suppose 15 million was on offer to settle. This

could be calculated as in the computation with discounting attached. They would then seek the return of the trust tax, probably circa 3 million, leaving net 12 million", and so on.

And if you look at the bottom of that page, and if you go to the end of the calculations as well I won't weary you with going through them you will see that the figure that you are left with is 15 million; do you see that?

A. Yes.

Q. Now, it would appear that or does it seem to you that 15 million, or some figure like that, was in the air at that time, to think that a lot of calculations and computations were done to show how you might arrive at a figure of 15 million?

A. Yes.

Q. And does it seem that that figure had been mentioned by somebody in anticipation of this meeting?

A. I wouldn't think so, no.

Q. That it might have been mentioned as a figure that was acceptable to the Dunnes, thinking of the point you made yesterday about the echo that 16 million had?

A. Well, that was because of the nature of the questioning I realised where you were going. I think I was entitled to say that. But it wasn't because Mr. Dunne had it in the air. I just had it in the air here.

Q. Well, it was a massive reduction from the 38.8 million, wasn't it?

A. Well, it really had nothing whatever to do with the the negotiations were on a different basis. The assessment had been made, and they were going to go to appeal. Now, as far as I was concerned, I was searching, not for 16 million, but for a figure by the way, at that stage I believed that Mr. Dunne and his interests, because Mr. Fox was there also, would be prepared to negotiate. Now, that put me in a fairly onerous position, because this was even the 16 million, in 1987, remember, was a lot of money, and that to go to the hazard of losing money at a stage when this amount of tax would be of great benefit to the Exchequer at that particular time, with as I say, the important thing is I mean, it was explained to me, and I recalled it because I have read the papers, because it would give a very low value forward, so that when the ultimate disposal came, the Revenue, or the tax position would be protected. That not alone did I favour it wasn't that I favoured that, but that I felt that I was obliged to consider that there was a substantial offer of substantial tax, in safe circumstances, on offer, and that I couldn't behave as if I had no responsibility in that. I had the responsibility of seeing was it a reality.

Q. But if Mr. Bowen's recollection is correct, and Mr. Uniacke's recollection is correct, that figure of 15 or 16 million had been on the table right back in 1985, and no attempt had been made to carry out some calculations in the intervening two years.

A. Well, you see, I don't know that, and I didn't know it then. I have to go on what I knew then. I can't go on what Mr. Bowen or somebody else thought.

Q. If you go to that meeting that you had with your officials on the 11th May of 1987

A. Where are you now?

Q. That's in Document Tab 33.

A. There is no 33 on the document I have in front of me here.

Q. In the red book.

A. Oh, sorry. We have gone off this, are we?

Q. Yes, thank you.

A. Where did you say you were?

Q. If you go to Tab 33, please.

A. Yes.

Q. Now, if we just go through it as quickly as possible, in case it stimulates your memory in any way.

It says this is Mr. O'Cathain's note, and I think the

"He" means you "He had met BD and Mr. Fox recently at the request of An Taoiseach. It was the C.G.T. they wished to talk about. The C.A.T." I think that's 4 million, or something like that; in fact we know it was 3 point-odd

"Would be paid. They had a frank discussion. BD did not believe on his advice that there was any C.G.T. due, but he did not want a long drawn-out appeal, and he recognised at best that the full tax would only be deferred. 23 million was too much for him to pay now" "now" is underlined, as if in some way there might be some room for manoeuvre.

"He would like to come to agreement if possible. The Chairman pointed out that Revenue claim was for the full amount and that he was only nominee for the Dail and the board in this matter, but he would seek further advice on the matter. BD intimated that with the grandchildren coming up, he was considering hiving off the properties into an unlimited company and passing shares in it out to them. It would charge rental to the trading companies. He wanted this appointment to be done through the trust. This was also part of his desire to reduce the exposure to public scrutiny of the trading empire when disclosure requirements are introduced. We discussed generally the latter point and agreed to examine the implications of it. With a multiplier of almost 5 since 1974 we might not receive much C.G.T. on such disposals. The Chairman was interested in the idea of treating the disposal as being to five separate trusts and discounting the 20% holdings for non-marketability with the consequential reduction in the deemed acquisition cost of those holdings of the new trust. He was fairly sure there would be no C.A.T. on such an acquisition by the trust, and on checking, it seemed that for trust tax purposes, such holdings would continue to be valued as a proportion of the 100% of the company with no discount. He was not as enthusiastic about having a value for the 1974, 8 million, but would like to hear more about it. We looked at the Trust deed setting up the five funds and saw that where on the one hand the trustees were given

power to appoint as they wished each of the 5 children could nominate what grandchildren of the original settlors should benefit from each named fund consequent on the nominator's death. We discussed the possible levels of discounting for the 20% holding for non-marketability and the tax values forward appropriate to these.

"The Chairman asked to us study the five separate trust aspect and to meet him again at 10.30 on Friday next.

"I mentioned the surcharge and that it might be indefensible but could be used as a bargaining counter.

John Reid had passed him my note on this.

"It was agreed that the deed of the 17th March" I think that should be the 14th March "1985, having been accepted for trust tax would not now be challenged, but to ascertain whether it involved a disposal might call for evidence from the principals as to what precisely went on in March 1985 and what understandings or other documents were entered into to copperfasten the five children's individual interests. This could be put to BD in negotiating."

Now, if you ally what's contained in that note with the two memoranda that I drew your attention to a moment ago, it would appear that on the Revenue side, Revenue were looking at the top figure, which had now been brought down from 120 to 82, and the bottom figure, which might arguably be increased to 5.5 to 8, sorry which would generate a much, much smaller gain. Because I'm sure you'll

appreciate that with a multiplier of 4.4, every million you add on in 1974 is 4.4 million, and therefore you save about 2 million tax; whereas every million you take off at 120 only saves half a million tax. Isn't that right?

A. Well, that's a very long question. I don't know where

Q. I'll take you through it slowly, in case

A. I mean, there are a number of points there. Can I deal with the memorandum first?

Q. Maybe we'll just deal with this point, because it will come up again and again. Just so we'll understand the way the tax works.

There is a multiplier applicable to the 1974 value.

Whatever value you pick for 1974 has to be multiplied by 4.14 to arrive at a chargeable gain before it's deducted from the current year, whatever that year is.

A. Yes.

Q. Therefore, if you add 1 million to the value of a company in 1974, you are adding 4.5 you are adding 4.14 million to the sum to be deducted from the current value of the shares, or of the assets?

A. Well, if you have done the sum, I won't disagree.

Q. Well, obviously, if you add 1, and the multiplier is 4.14, then you must be adding 4.14 to the sum to be deducted from the current value.

You were going to make a point.

A. I am going to make a point that this is a summary of a whole lot of various potential points that can be made and

thought about in having some kind of discussion about this liability. I mean and I think the figures illustrate the consequences of various ways to go about it.

Q. Yes. And that's what I was saying. Because looking at this calculation is all about two figures: the current value of the company, and the value of the company in 1974.

A. Yes.

Q. And the difference between those two is the chargeable gain.

A. Yeah.

Q. If the gap between those two figures is narrowed, the chargeable gain can be reduced markedly; isn't that right?

A. Yes.

Q. The point I was making to you was that for every small addition to the value of the company in 1974, you get a huge increase in the sum to be deducted from the current value of the company, and that is because of the multiplier.

Now, if you go on to Document 34, you'll see that the same thing, or similar points are being canvassed.

If you go to the typed transcript, it's the 15th May 1987 meeting with you, Christopher Clayton, and Mr. O'Cathain in attendance.

"He is concerned about the charge to C.G.T. on record in this case, and he will have to prepare an explanation before the 30th May for the C & AG on it." Now, I was asking Mr. O'Cathain what concerns Revenue were having

about that charge at that time. It is my impression that if you were discussing settlement at this stage, and in particular settlement as low as 16 million, then you were going to have to provide an explanation for a figure of 38.8 million to the C & AG; would I be right in that?

A. That was the figure on record, yes.

Q. And that that was your concern?

A. I think I touched on that yesterday.

Q. Could I ask you now to look at Document 35, the document in Tab 35. This is, again, Mr. Reid's own note of a meeting with you on the 22nd May of 1987. It starts off with a discussion of some of the legal technicalities on the question of liability to tax.

A. Is that the 22nd May?

Q. Yes, 22nd May, 1987.

A. Where it says "I mentioned 1, 2", etc.?

Q. Yes. And what Mr. O'Cathain says, firstly he refers to a number of cases. He says: "In light of my review of the cases, I said there seems to be good grounds for argument for continuing settlement."

In other words that the Trustees had good grounds. And he seems to have given a copy of his summary of those cases to presumably to you. Maybe also to Mr. Clayton.

Then if you go through the cases, and you go on to the third page of the document of the transcript, and the second paragraph on that page, he records the following:

"The Chairman moved the discussion to valuation of the old"

that's perhaps "the ordinary shares for C.G.T. What about discounting from the 82 million for not having the preference shares. John Reid is to examine this for Monday. Counsel said ordinary had no rights. Then said they could put down an AGM for liquidation and vote on it as in liquidation and distribution to them of all the shares in Dunnes Stores Limited. If he is wrong, what discounting? Even if he is right, do the arguments in the valuation paper for not discounting the C.G.T. value of 120 million still stand up? Discussion re valuation of 82 million for '85 because of '84 and '86 figure accepted."

Do you see that?

"Chairman feels, apart from a bargaining point, we are constrained by it.

"I gave him details of grandchildren he thinks the desire to provide for them getting something is borne out by their ages.

"His job as collector is to see how good the case is so as not to gamble or lose all now with a deferral away in the future.

"If we should negotiate on what basis do it he reach a settlement.

"I said that if discounting were to apply (especially with '74 valuation at up to 8 million) it would give us the outcome I first was aiming at when I heard of negotiation, i.e. reduced charge with one trust and reduced value forward with interest.

"A further meeting was arranged for Monday at 3pm as he wishes to meet them soon."

He goes on in a little postscript "I received a telephone call. Noel Fox rang asking if in the light of ongoing negotiation they could suspend their preparation with counsel for the appeal hearing. He agreed" meaning you agreed "it would give a better atmosphere for negotiations."

Now, if you go to the second-last page of the transcript, in the portion which begins "The Chairman moved the discussion to valuation of the old shares for C.G.T." And there is a reference to the 82 million valuation for '85 and '86 '84, '85 and '86.

"Chairman feels apart from a bargaining point we are constrained by it." Does that suggest that you felt that that figure was now going to have to be the bottom-line figure for the valuation?

A. I don't really know.

Q. If it's an accurate record of what discussion took place, it would seem that would seem to be a reasonable interpretation, doesn't it?

A. Yes, yeah.

Q. Mr. O'Cathain himself seemed to feel that there was a degree seemed to feel that that's what it meant. What I can't understand is why the Revenue should have been constrained by it, having regard to the trouble that you went to to ensure that the settlement was without prejudice

to C.G.T. Can you understand why I would ask that question?

A. Well, I think and we did use it then as a base point, didn't we, 82?

Q. You seemed to have used it as a base point.

A. Yes.

Q. But, you see, a lot of the discussion that was taking place at this time was with a view to achieving a settlement, but protecting the Revenue by having a low value forward, on the basis that ultimately the Revenue would scoop the pool, if you like, when it came to disposal of the trust

A. No, not exactly that.

Q. Well, if you had a low value forward, you were always protected; isn't that right?

A. That is right, but the that would be as a consequence of whatever figure that you settled on, but the purpose of the exercise was not to get a lower and lower value forward.

Q. I appreciate that. But that you would be protected even if you felt compelled to reach a settlement at what you felt was, perhaps, a low value, or a low-ish value; that you would nevertheless feel protected, because when ultimately, or when at a later point Capital Gains Tax came to be computed, you'd be relying on that value as your starting point; isn't that right?

A. Yeah, that's true, yeah. I mean, that's a fact.

Q. It seems to be, but on the other hand, here you have a settlement at 82 million, and a specific provision in the agreement that it's not to affect C.G.T., and yet Revenue

seem to feel bound by it, although there was no obligation on them to be bound by it.

A. But, I feel, myself, that what that meant was that was the starting point.

Q. But why should it be the starting point, if you had expressly agreed it shouldn't be the starting point?

A. Well, we didn't have a Tribunal at the time, and I didn't go around with all this information in my head.

Q. No, but you had Mr. Sherlock, you had your counsel who drafted the document, it's perfectly plain, it says

"Without prejudice to C.G.T." It seems perfectly obvious that if you are going to agree a settlement with values for '84, '85, '86, '87, all at the same figure, which is a huge benefit to somebody, presumably to the taxpayer, you would say, "Well, that's for the purpose of settling this case; it's without prejudice to any arguments we might make on C.G.T."?

A. Of course, yes.

Q. I don't know if you have read all the papers, and if necessary I can produce these papers, but I think somewhere in the papers Revenue felt at one point that they might proceed with a valuation for C.G.T. and C.A.T. at the one time in March, but nothing came of it. Do you remember that at all?

A. I don't, no.

Q. But it would clearly have you can understand why it would have been a good idea, wouldn't it? Get everything

out into the open; let's see what this company is really worth. It would have been a good idea. I think there were logistical reasons why it couldn't have been done?

A. I just don't recall that. I mean, that's a very small detail which requires me to remember these for instance, these meetings are exploratory, and various figures are passed around. I have no recollection of them, but at the same time, they indicate to me the nature of the discussion which was going on.

Q. It seems that the nature of the discussion was to try to get down to 16 million by revising all of the figures that had been so carefully looked at in 1985 and 1986.

A. Well, that was not the case.

Q. One of the things we have been trying to find out is, did the Revenue really believe in these figures? In other words, did they believe that the company was worth only 82 million? Did they believe that the company was in fact worth 8 million in 1974? Or was this simply a way of justifying a settlement? I'm not saying there is anything wrong with that, because you would have been protected, but did they believe in these figures?

A. Well, for the purpose of the settlement of the Discretionary Trust Tax and the Capital Acquisitions Tax, that was a number which was coming down from whatever it was, at which the Revenue agreed.

Q. For a specific purpose: to settle a specific case without prejudice to the other case?

A. Yeah.

Q. But all these discussions were taking place when you were canvassing with your officials different ways of treating the '74 valuation and different ways of treating the '85 valuation. You don't appear to have gone back to Mr. Sherlock or your counsel at all on this question of discounting.

A. No.

Q. Would that seem to suggest that this was being done to arrive at a settlement figure, and not because you really believed in these sums?

A. Well, it was being done to arrive at a settlement figure, that is true, but it was also to put it in the context of saying whether something was believed is scarcely arises. What we were exploring was what numbers would be justifiable.

Q. What I'm suggesting is that if Revenue felt that the correct value for this company was 82, and the correct value in '74 was 8, and that therefore, the correct gain was much, much lower than the 97 million in the assessment, they should have told the taxpayer the assessment is wrong?

A. I think "correct" is not the way to describe it. An acceptable value.

Q. Yes, but you no longer thought 97 was an acceptable gain, or maybe you did, but you were prepared to settle it on this basis, provided you could come up to 16 million come down to 16 million.

If I could just again refer you to some more calculations, briefly; this is in Tab 40. This is a note to you of, I think, Mr. O'Cathain I think it's dated the 26th May 1987, and again is a set of figures, or a set of workings which would leave you with in or about 16 or 17 million for tax.

A. Yes.

Q. And then if you go to the 4th June, you'll come to a note of another telephone call from you to Mr. O'Cathain.

You'll see there both a transcription and a translation; I am sure

A. Yes, I have it.

Q. Tab 42. Ghlaoch and Cathaoirleach. Bhuail se le BD. Shochraigh siad ar 16 million." Do you see that?

A. Yes.

Q. Do you remember that meeting?

A. Well, yes, I know it.

Q. You mightn't remember the day or date, but do you remember a meeting at which

A. I remember a meeting, and I remember this.

Q. And if you look at the transcription, it's described as "settled on" or "agreed on"; maybe "fixed on" might be a more neutral way of approaching it, or describing it. But one way or another, it seemed to suggest that you had, between you, achieved a consensus on a figure of 16 million with three years to pay, but that Mr. Dunne was to think about it and come back to you.

A. That's correct.

Q. And it's a fairly short note. It's unlikely Mr. O'Cathain got it wrong, but it would seem clear that you felt that you had settled the whole thing subject only, as it were, to the other people involved agreeing with the figures; would that be right?

A. Well, I think that I would have realised that that was a stage at which we were, where we had got to these numbers.

Q. Yes.

A. But since they weren't really accepted, I wasn't sure about that.

Q. How did you can you recall how you arrived at the figure of 16 million? Did you say to them, "I can do it at 16 million", or did they ask you, "Can you do it at 16 million?"

A. No, the figure of 16 million was derived from the starting point of 82 million.

Q. You mean to say it was a figure purely generated within the Revenue, never suggested by Mr. Dunne and Mr. Fox?

A. I would think so, yes. We don't have any figures from them, and in fact, as we know, they didn't agree anyway, or were never going to. But the figures were calculations based on the idea which I already explained, that there was a settlement on offer, and we were trying to proceed to one which would be acceptable.

Q. But you moved away down from your original figure. I'd suggest that before anyone would go to the trouble of

carrying out all those calculations and doing all those computations, you'd want to know that the figure you were trying to justify was going to be acceptable to the other side. Would I not be right in that?

A. Yes.

Q. And therefore it seemed to follow that somebody

A. At least you'd want to go into the territory which might be acceptable, yes.

Q. But that you would have believed, from something that had been said to you, that that is the territory you are going to have to go into if that deal is going to be done?

A. Yes.

Q. Now

A. And the basis of it was to accept the 82 as a starting point.

Q. As a starting point, yes.

A. And at all times, as I said, the object of the exercise was to try and get some money into the Exchequer without doing damage to the position and without incidentally without losing.

Q. Without losing

A. I mean, there was always the potential that we would lose on appeal, as we did.

Q. But at this stage you didn't believe you were going to lose. Obviously you felt there were risks?

A. Yes.

Q. Of course, but you didn't think you were going to lose.

You weren't settling at 16 million because you thought, "We better settle at 16 million; we have very little chance here"?

A. Absolutely not. But I was aware of the hazard.

Q. Yes.

Just to come to the settlement, had you I want you to describe for me how you felt or what you felt had been achieved at that meeting. I am still not quite clear. Am I right in thinking that you on the Revenue side, Mr. Dunne and Mr. Fox on the Trustees side, on the Dunnes side, if you like, had agreed 16 million, three years to pay, Mr. Dunne is to go off and think about it?

A. I don't think we had quite agreed. What we agreed to do what they agreed to do was to consider it.

Q. You weren't making an offer of 16 million?

A. I was making an offer I was making a suggestion that we might settle within the parameters that are described in these documents.

Q. But they must have been you must have had the impression that they were happy with the figure of 16 million. Maybe they had reserved their position whether they'd agree at all, finally, depending on what other people might say; but to think that Mr. O'Cathain noted that you had fixed on a figure of 16 million, or settled on a figure of 16 million, there must have been a degree of consensus that that is the degree of settlement, it will be three years to pay; the question is will everybody go with it? It wasn't an offer?

A. I don't think we started 16 million and derived the other figures from it. I think we started the other way around, that we looked at the 82 million not "we"; that they looked at the 82 million, and by various by taking more, what you might call, detailed accounts of various things, they arrived at the figure I don't think we ever started with 16 million.

Q. But ultimately, at this meeting

A. Where would I get the 16 million from? Are you suggesting I got this figure from the top of my head?

Q. No, I am suggesting you got it from Mr. Dunne or Mr. Bowen or Mr. Fox.

A. My recollection is that at no stage did the Dunnes ever make an offer of the amount to settle. And it is clear now that there was never any offer around it. How could they have done so? Because the Trustees themselves, who were the defendants or, sorry, the assessed persons it emerges from what we have heard here, had no intention whatsoever of having any negotiation.

Q. Well, we have heard evidence that there was a figure of 16 million on the table to dispose of everything, to get rid of the trust, according to the Dunnes Trustees, Mr. Uniacke and Mr. Bowen.

A. But is that a reference to this particular

MR. O'NEILL: Mr. Chairman, if you look at the transcript in question, Mr. Bowen said that he had in mind, and Mr. Uniacke referred to a figure of 12 to 15 million.

There isn't anywhere in the transcript, as far as I can see, any suggestion that that figure was ever communicated to the Revenue. And of course, in any event, it was a figure to break up the trust rather than to deal with a potential liability that may arise on the 1985 deed.

Q. MR. HEALY: Maybe I'll just read from page 64 of Book 296, Mr. Bowen's answer to Question 186.

"Yes, effectively we if you remember back to March of 1985, our whole approach to the Revenue and our whole approach in this process, we actually wanted to pay money to the Revenue, but this was only one, this was a sum of money that we could afford. When we had done the calculations in '85, we had come up with a figure of maybe 12 or 15 million, and we probably could just about have handled and that was on the table in 1985. When Mr. Pairceir put his 43 million on the table, then, it blew us out of the water."

I am quoting from Mr. Bowen's evidence, referring right back to 1985. In any case, your evidence is that you were never a figure of 16 million was never broached with you, as far as you can recall?

A. Certainly in 1985 there was no discussion of the actual amount or potential amount of liabilities.

Q. There was certainly discussion of the potential amount of liability, to judge from evidence on both sides so far.

A. There was discussion about the magnitude of that potential, but I don't think the Revenue hadn't got around to

dealing with any figures in 1985, and I doubt very much if the Dunnes had.

Q. The Revenue had a tentative figure of 43 million, and in fact that figure was broached at a time when there was no write-off of C.G.T. and C.A.T., so the actual tentative figure at that time would have been very close to the figure that it came out at after the assessment, of 38.8 million. To judge from the Revenue records, that figure was on the table in 1985.

A. Well, that's totally news to me. I certainly didn't I don't see how it could have been.

Q. Well, I'm only going by what the documents the Revenue record of the meeting of March '85 says.

A. But in March '85 there had been no negotiation or no discussion whatsoever about valuation. We weren't dealing with valuation then. It was later on in that year, or later on at some time that all this business of the work on the valuation

Q. I don't want to go back over all the evidence yesterday, Mr. Pairceir, but we did go through that document rather carefully yesterday; and in it, there is a reference to a figure for the value of the company being put forward by the Dunnes and a figure being put forward, in each case tentatively, by the Revenue, and on the Dunnes side

A. By the Revenue?

Q. By Revenue, yes. And on the Revenue side, the tentative valuations being put forward would have generated tax in

the order of 43 million

A. I don't know how that could have happened.

Q. Just let me finish. The tentative values put forward by Dunnes would have generated taxes in the order of maybe 16 million.

MR. CONNOLLY: I am sorry to interrupt, but those documents yesterday were internal Revenue documents. They were reflecting the Revenue's thinking. I don't believe that they were ever put forward to the Dunnes side in 1985. I don't want that impression to be made.

Q. MR. HEALY: I am not suggesting the documents were put forward. What I am saying is there is a record of a meeting, and it's the record of that meeting it's from the record of that meeting that I derive the impression that the figures were mentioned on both sides. I am reading the Revenue note: "The taxes payable on the basis of a valuation of 80 million would be 42.2 million. The parties have submitted a valuation of 34 million." I won't go back over that evidence again.

Now, I am going to refer you to a document in the blue book; it's Book 64. And rather than putting you to the trouble of looking at the book, I'll get the document.

It's a letter in Tab 12 of Leaf 9. This is from Messrs Matheson Ormsby Prentice to Mr. Frank Bowen on the 9th July, 1987.

It says: "Dear Frank,

"Have you heard anything further regarding the listing of

the Capital Gains Tax appeal, as it looks unlikely now that anything can be done before this autumn. I suppose you did not receive any confirmation as to what senior counsel they are employing, but it may be they've not yet sent out any brief.

"I understand that indirect approaches have been made to Bernard to see if he would compromise the claim which may suggest that the Revenue are not too happy about their chances of success.

"Of course if Bernard wanted to settle and had very attractive terms offered to him, I would not stand in his way, although it would not alter my opinion regarding the legal position."

Now, I just want to draw your attention to the second paragraph, where the late Mr. Montgomery says: "I understand that indirect approaches have been made to Bernard." Does that accord with any conduct that you were aware of on the part of the Revenue in other words, that it was the Revenue, indirectly, that approached Dunnes to settle, rather than the other way around?

A. I have no knowledge whatsoever that the approaches had been after all, we are standing here or sitting here because of because of the approaches that were made to the Revenue, and I doubt very much if anybody had any contact with Mr. Dunne apart from the meetings that I had with him.

Q. Well, Mr. Haughey had contact

A. And certainly it's not true to say that the Revenue are not too happy about their chances of success.

Q. You wouldn't agree with that?

A. No.

Q. Can I ask you to go to on the red book, Leaf 44. It's a note of Mr. O'Cathain's in fact, ironically, on the same day the same date as Mr. Montgomery's letter. "BD and Noel Fox are coming in next week. He would like a copy of the settlement form."

A. Yes.

Q. It seems that at that stage you must have anticipated some response to what had happened the week before, and you were anticipating possibly concluding a settlement?

A. Yes.

Q. The month before, sorry.

Looking for a settlement form is not necessarily obviously indicative of complete confidence in a settlement, but would seem to suggest that you had some apprehension that there might be closure on this issue; isn't that right?

A. Yes.

Q. And wouldn't that seem to suggest, then, that the 16 million was mentioned, or fixed upon, in the context of complete closure, subject only to Mr. Dunne thinking about it?

A. Well, in the nature of negotiation, we gave them the figures. They said they would think about it. Then there was an interval, and then I heard, or somebody heard that

they were coming back in again and they wanted to deal with this settlement. I had a document prepared in case they might agree to that. In the event, they didn't.

Q. Go to Document 45. That is presumably a record of perhaps an account you had given to one of your officials of the meetings with Mr. Dunne and Mr. Fox. It says:

"Per J"

A. It's Mr. O'Cathain's report

Q. "Negotiations with BD have foundered, apparently BD wanted to deal with C.A.T. also now as if the beneficiaries had or were taking the shares. The C.A.T. would be of the order of 30 million, and 5 years would have been allowed to pay it if the C.G.T. would be allowed as a credit against the C.A.T.

"Christopher Clayton has retained some papers. He will advise me in more detail later. He had several meetings with An Cathaoirleach, who met the other side on his own."

"29/10/87" I think by that stage you had retired; is that right?

A. Yes.

Q. Oh, I am sorry; I misled you. I omitted to correct that date on my note. That should be July, in fact.

A. What should be July?

Q. That date of the 29th October should be the 29th July, according to Mr. O'Cathain.

A. The 29th October is quite clear in the manuscript.

Q. Yes, it is. Mr. O'Cathain's view is that it's July. But

you may very well be right; it could be an interlineation.

But in any case, it would appear that whatever negotiations you had had with Mr. Dunne just prior to this date, or at some time prior to this date, Mr. Dunne now wanted to deal with C.A.T. as well; in other words, he effectively wanted to terminate the trust or make appointments out of the trust, which would give rise to C.A.T., isn't that right, as well as C.G.T.?

A. Yes, it means nothing to me; I don't recall anything like this.

Q. But at that stage, presumably you would have been operating, whatever the terms of settlement, you'd have been operating on the basis of the values for the shares that had already been canvassed; i.e., 82 million discounted, and 8 million for 1974?

A. Could you put me through I don't recall those figures off the top of my head.

Q. Mr. Dunne at this stage was, if you like

A. Is there a document I can look at?

Q. I don't think there is, apart from this document.

Mr. Dunne was, as far as I can see, looking for a bit more.

The note of the previous bout of negotiations you had had with Mr. Fox and Mr. Dunne recorded a settlement at 16 million with I think you offered three years to pay.

A. Yes.

Q. There must have been some degree of confidence that this might have been acceptable because you went to the trouble

of calling for a settlement form.

A. Yes.

Q. Presumably that would have involved an alteration a new assessment.

Then this note suggests the negotiations have foundered, and I read the note as explaining why they had foundered, because Mr. Dunne now wants to introduce a new element into the settlement; he wants to deal with C.A.T. And the reference to C.A.T., I take it, infers that or suggests that what Mr. Dunne wanted to do or what the Dunnes wanted to do was to make appointments out of the trust, effectively to bring the trust to an end. And this would have given rise to both C.G.T. and C.A.T. But those discussions, presumably, were still proceeding on the basis of the 82 million valuation, the current value, if you like, with the discounting, and the 8 million with the multiplier for 1974?

A. That's for the C.G.T.

Q. Yes. But there is no suggestion at that stage that anyone had said to Mr. Dunne, "Well, if you are going to talk about C.A.T., we are going to have to revise the values." Isn't that right? And correct me if I am wrong, but there is no note at any point here which suggests that the values were going to be

A. But this is this is a totally new topic, because their position had been that there was a disposal, it wasn't a disposal in our possession, but there was a disposal, but I

don't think there was any question at that stage of the beneficiaries being subject to Capital Acquisitions Tax.

It certainly had never occurred there is no reference earlier on.

Q. No, no, no, you are absolutely right; a new element has been introduced into the settlement. If there is going to be a settlement, according to Mr. Ben Dunne at this stage, he wants to introduce the C.A.T. into it now as well; isn't that right?

A. Yes, but that implies an enormous complication of understanding as to what had actually happened. There is a further reference to that, too, that I don't understand; it's in September.

Q. If you go to Document 47

A. Which is also a

Q. What I'm saying to you is it's being canvassed in that document, Document 47. And I won't go into the detail, but I think it's canvassed elsewhere as well, but in every case it is canvassed on the basis of the values that were being canvassed by your officials, and which generated tax at 16 million, i.e. higher values for '74 and lower values for '85.

A. Are you back to the Capital Gains Tax now?

Q. Yes, but the Capital Gains Tax values, the values that you were canvassing for the purpose of settling the Capital Gains Tax do you understand me? Those values were now, it seems to me, being considered in the context of the

C.A.T. as well.

A. Yes. These were the figures we have been through that endlessly these were the figures which, on the basis of various reasons which we have discussed already, we had arrived at the rather the technical people had arrived at these figures.

Q. Well

A. As being justifiable.

Q. Around this time you then retired; isn't that right?

A. Yes, September.

Q. If you look at that document that we were just looking at, Number 47, that was the 10th September of 1987, the Dunnes coming in again, settlement was still alive, you were about to retire, would it have been the following day?

A. Yes. Well well, I had indicated that I would go in September, and so my the next Chairman had been appointed would be appointed on the 11th, and so that from July onwards, I was on holidays then in August; my operations in the Revenue had, shall we say, declined.

Q. But you were obviously still planning to meet Mr. Ben Dunne right up, presumably, to the last day?

A. I don't think I was planning. Somebody must have approached me. This makes no sense at all. I don't know where it starts or ends, and certainly I wasn't going to negotiate anything on the 10th September, 1987.

Q. That's what I am wondering, because it says "Call to Christopher Clayton from on Cathaoirleach. Dunnes coming

in."

A. Yes. But if if they actually phoned up, I mean, I would have seen them. But it surprises me. I don't think I'd have been very active, anyway, on the day before I retired.

Q. If you look at that note, Note 47, there seems to be a record of a message containing

A. But it starts and goes it doesn't go anywhere.

Q. No it doesn't, but you must have a reasonably extensive communication with somebody on the Dunnes side, because there is a record that they wished to proceed on the basis that the deed of the 14th March was invalid, and that the beneficiaries became absolutely entitled on the 15/3/1985.

Do you see that?

A. Yes.

Q. This was in other words, the suggestion was that everything would be rolled back. The deed would be deemed to be invalid, and the default vesting would be deemed to have occurred on that day.

A. I don't think that was ever on the cards, and the evidence that I have read from the various Trustees, and even that note from the late Mr. Montgomery of Matheson Ormsby Prentice suggested a totally different attitude on the part of the Trustees.

Q. Mr. Dunne was running the Trustees, wasn't he?

A. Sorry?

Q. Mr. Dunne was the boss?

A. Mr. Dunne was in charge of the company that would have to

pay the money, yeah.

Q. Trust or no trust, he was running the show. He was dealing with you. He was a beneficiary, he wasn't dealing with beneficiaries, he was a potential beneficiary.

Before you retired, did you, or is there a practice for retiring chairmen to take the incoming Chairman through, if you like, the important items on the overall agenda of the Revenue Commissioners at the time of retirement, at the time of the changeover?

A. I don't think so.

Q. So you wouldn't have had a meeting with Mr. Curran and said, "Look, these are the things I have been doing"?

A. No.

CHAIRMAN: Well, it seems to me, Mr. Healy, there is some limited amount of post-retirement matters, but you haven't a great deal to do, but between that and questions that colleagues may have, it's going to necessarily take it sizably beyond the two hours, so I think we have to accept perhaps one last session.

And it occurs to me, with other commitments pressing the Tribunal, that Monday is probably preferable to Tuesday, if that doesn't pose significant difficulties for anyone, particularly yourself, Mr. Pairceir.

A. Well, if I thought we Your Honour, if I thought we could finish this afternoon, but it doesn't look likely but if I thought we could finish this afternoon, I would rather come in and not bring everybody back in again on Monday.

CHAIRMAN: Well, I'm certainly prepared, but my main concern is for yourself, Mr. Pairceir, because I am conscious it's a long concentration span.

Maybe I should formally inquire, how long do those who may be examining Mr. Pairceir feel they might be? Mr. O'Neill?

MR. O'NEILL: I'll only be very short. I wouldn't think I'd be more than five or ten minutes.

MR. CONNOLLY: I'd be even less, five minutes or less.

CHAIRMAN: Well, it does seem manageable, perhaps; you are not going to be a great deal of time on the one remaining issue, Mr. Healy?

MR. HEALY: No, with a short break until two o'clock I am sure we can dispose of it all by

CHAIRMAN: I think so. Perhaps, if we reconvened at 2.15. Obviously I am very much obliged for your indication that you may prefer to conclude it today, and we will do our best to see that that can be achieved.

THE TRIBUNAL ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

CONTINUATION OF EXAMINATION OF SEAMUS PAIRCEIR

BY MR. HEALY:

Q. MR. HEALY: Thank you, Mr. Pairceir.

I just want to clarify something which maybe arises from my failure to grasp something you said yesterday and again today. You didn't retire from Revenue; you resigned to take up a new position. Is that right?

A. No, I retired.

Q. Sorry. You used the word "retired", and "resigned" I was wondering, one of my colleagues was telling me I used the word "retired", and you used the word "resigned"; and I assumed you might have resigned to take up a new position somewhere else. You retired in the ordinary way, then?

A. My term had expired by the efflux of time. I had to go.

Q. Now, just a few final matters.

Just look at your statement again, please. It is in the blue book; you may have it separately or independently of the blue book.

A. Yes, I have it.

Q. If you go to page 3 of your memorandum: "Retention of Mr. Pairceir as adviser to Bernard Dunne, the Trustees of the Dunnes Settlement." You retired, as you have indicated, in September of 1987?

A. Yes.

Q. And sometime after, you were engaged in an advisory role to the Custom House Dock Development Authority, and in the course of that work you were asked by Mr. Fox, who was also a member, or who was a member of that Authority, whether you would help in researching issues arising from the pending appeal by the Trustees in relation to the Capital Gains Tax assessment raised by the Revenue Commissioners, and you agreed to do so. And you have explained what you did. You then explain that in 1989 you did some further work with the staff of Oliver Freaney in connection with PAYE problems in Dunnes arising from payments and other

perks where PAYE had not been applied. I think you were dealing with some VAT questions and maybe also Discretionary Trust Tax in 1990. And at a later point, I think you were involved in assisting with submissions on the whole principle of certain Capital Taxes; would that be right?

A. Yes.

Q. Now, that latter work you did was in I think in the 1990s. The work you did in 1998 was in connection with payments and perks where PAYE had not been paid. That was something that developed in 1989; isn't that right?

A. Yes.

Q. And obviously your considerable experience in the Revenue Commissioners would have been of value to Dunnes in dealing with that issue, and in dealing with, as I think I might call them, the sort of policy issues that you were later handling, or even, indeed, in the context of the VAT issue.

I just want to go back to the work you did at the request of Mr. Noel Fox, however, in 1988.

A. Yes.

Q. Now, can you remember when you joined or when you were retained by the Custom House Docks Development Authority; was it in '87 or '88? In other words, asking to you remember, can you remember whether it was shortly after when you retired, or was it in the following year?

A. It would be sometime later in the year 1988, because at the end of '87 and at the beginning of '88, I did some

promotion work for the State in connection with the promotion of the Financial Services Centre. Mr. Tomas O'Coffaigh, who had retired as the Governor of the Central Bank, and the late Mr. Maurice Horgan, who had been Deputy Secretary in Finance, we were asked to do this promotion work. The reason that we were asked was that Mr. O'Coffaigh, having been a governor of the Central Bank, had the entrée into bankers through the bank contacts, so that we travelled around a lot in the beginning at the end of '87 and well into the middle of 1988 promoting Financial Services Centre abroad. You know, we had several visits to Germany and to France, to the UK, and one or two to the United States.

At the same time, I was also, as a result of my first journey abroad, which was with Mr. Ciaran McGowan from the IDA, he asked me and Mr. White, who was the Chief Executive asked me would I help in the promotion of the Financial Services Centre from an IDA perspective. And I did a lot of work on what we now call what we call mutual funds, how they could be fitted into the administration, which was a developing industry, and which in fact succeeded.

Q. Would I be right in concluding that you seem to have been kept fairly busy after you retired from the Revenue Commissioners, then?

A. Yes.

Q. Mr. Fox gave evidence that he had formed the impression

that you were setting up as a tax consultant.

A. No.

Q. That's not correct?

A. No. I wouldn't have the gall to do that. I mean, I knew a lot about taxation, but you know, I wouldn't I wouldn't have the accountancy skills which go with tax consultancy.

Q. Do you agree that well, perhaps in light of your answer, I should ask you, how did he broach the subject of you becoming involved in advising the Dunnes in relation to the C.G.T. appeal?

A. Well, I don't recall the detail, but I seem to remember that we were at a lunch somewhere, and that he was sitting next to me, and that the subject came up in some way.

Q. You have included with the documents you gave to the Tribunal some of the work you did for the Dunnes. If I could just refer you to the first item, which is Item 2.

A. Which book are we in?

Q. In the blue book. It's Item 2 in the exhibits, if you like, attached to your memorandum. Tab 2, Leaf 11.

A. Oh, yes, yes.

Q. And the first document is, I think, a consideration of a Statement of Practice issued by the English Inland Revenue.

A. Yes.

Q. You describe the Statement of Practice. And then you make a comment on it. If you go to the third paragraph of your comment, it begins: "The crucial question in deciding whether there is tax liability is whether the appointment

or advancement is a separate settlement. The Inland Revenue in the UK now follow the line of the decided cases. The power being exercised must be in the wider form, and in addition, liability will not arise if the appointment is revocable or the trusts declare that the appointed funds are not exhausted. But further indication that a deemed disposal did not occur if duties with regard to the appointed assets still fall to the Trustees of the original settlement." I think that should probably be "is if duties with regard to the appointed assets still fall to the Trustees of the original settlement". In any case, it's a technical matter.

It goes on: "In drawing up the deed of the 14 March, 1985, counsel drew attention to the foregoing considerations and pointed out that there were certain risks involved. There was first a risk that the appointment might be challenged as being in excess of the power conferred by clause 3 of the settlement of 1964, and that the consequences which the Trustees were attempting to avoid would come about, and that there would be liability for both Capital Acquisitions Tax and Capital Gains Tax; and secondly, that the appointment might be found to be a separate settlement and that liability to Capital Gains Tax would arise.

"In the event, the validity of the appointment has not so far been challenged as being an excessive execution of the power in Clause 3. But the present difficulty arises because the Revenue Commissioners have taken the view that

the appointment is a separate settlement and that the Trustees of the 1985 appointment became absolutely entitled as identical trustees of the 1964 settlement", and so on.

"Against the Revenue claim the Trustees of the 1964 settlement would argue that the deed of appointment of 1985 was revocable and that the trusts in the appointment are not exhaustive. If no grandchildren are living on the distribution date, the ultimate trust is to be found in Clause 6 of the settlement of 1964."

Now, can you just tell me, what was your brief from Mr. Fox?

A. My brief, as far as I recall, was to look up the law and the cases, etc., and to present it in a form which would be digest it and present it in some kind of form to the Trustees, which I do there.

Q. Did you wonder why you were being asked to do that, bearing in mind that, according to what we have been told, Dunnes appear to have had an army of lawyers and accountants dealing with this?

A. Well, I don't think I did, because I thought that possibly that I would boil it down into a treatise on the issues without forming any conclusion about it. And in fact, all of the things that I did for the Trustees had an aspect of that where I was making, I hope, some kind of more easily intelligible format of the issues that were at stake.

Q. But what were you bringing to it that any other of the many lawyers and accountants that the Trustees had access to

couldn't bring to it?

A. Well, I don't really know.

Q. Well, was there perhaps some prospect that you might bring to it some special insight you had from having conducted the case on the other side?

A. I wouldn't think so, no. Because the even all the stuff that we have been through for the last two days is merely a recitation of various factors which arise as a result of the method of computation, and also of the law governing the issues. To some extent it consists entirely of that.

Q. Yes, but you obviously had to consider the liability issues as well, and many of the cases you deal with here were cases that you had received briefings on from your officials; isn't that right?

A. The cases are both in the textbooks and in the treatises and in the Statement of Practice, which are publicly available. I mean, it didn't and the advice, etc., that I got from my officials, which would be during the evolution of our knowledge about this, would be based in the same way.

Q. But if you look at the next page, questions which might be addressed; do you see that? You quote from a case of *Roome v. Edwards*. Then you go on: "While it is then a matter for the legal advisers, bearing in mind the advice quoted, nevertheless, some questions do arise".

The first and interesting one is why the Revenue Commissioners should take a different line to that which is

contained in the UK Statement of Practice. The deed of the 14 March 1985 is declared to be revocable. The advice of the draftsman is that the trusts declared are not exhaustive, and there is considerable support for the view that there is but one settlement."

Somebody reading that might wonder whether you weren't reflecting a view coming from the Revenue Commissioners, that there was considerable support for the view that there was but one settlement.

A. I don't think that reads into it.

Q. But you were the person who had run the case. You were, in fact, the Revenue, and now you are expressing this view just a few months after leaving the Revenue.

A. Well, I hadn't run the case in the sense that I had dominated the issues. I was in constant consultation with those people who knew about these things, and these various points emerged, but I wasn't running the case.

I have already explained that on account of the structure of the Revenue, the status of the taxpayer, the seriousness of the issues, that once I had been seized hold of it, as it were, then I had to hold onto it.

Q. If you go to the next page, please sorry, it's the second-next page. If you go to the third-last paragraph, which begins: "The second point, the answer to which is also one for Chancery lawyers, why it should be claimed that in the event of there being none of the grandchildren surviving to benefit on the distribution date, the children

who did not take any interest in possession of the trust funds by being alive on the vesting date should become the beneficiaries, or at least their estates would, on the happening of an event 20 years after the last one of them had died.

"These are technical points, and if there is any substance in them, they should be answered by those qualified to do so. But it would be clearly necessary that the Trustees should be in a position to respond to any examination with regard to their intentions."

A. That's a fact.

Q. The suggestion being, in other words, that Revenue might insist on examining the Trustees?

A. No. That's turning it upside down. The fact that one suggests that somebody should be in a position to answer questions doesn't mean to foresee that the questions are about to be answered or asked.

Q. It says: "It would clearly be necessary that the Trustees should be in a position to respond to any examination." I am not suggesting you were saying there would be, but you are saying they should be ready for it; isn't that right?

A. Yes. As a general point.

Q. But it was a point that had been canvassed in Revenue; isn't that right?

A. About the examination of the Trustees?

Q. Yes.

A. If it was, I don't recall it. Did we have evidence of

that?

Q. Yes. In Dunnes' case, it was being canvassed. Now, was that in fact the only work you did for the Trustees in relation to the appeal, that document?

A. Well I have that because I happen to have put it away, and when I was asked by the Tribunal whether I had any documents that I produced at that time, I thought it was fortunate that I found this one at least. But there were others as well, but and some of them were manuscript workings

Q. I appreciate that; perhaps manuscript working papers that enabled you ultimately to produce this?

A. And that happened to survive.

Q. Yes, but would this be the culmination of those working papers, is my point. Was this the product that was supplied to Dunnes?

A. Well, certainly it was one of them.

Q. This is dated September of 1988.

A. Yes.

Q. If you look at the next document, there is an invoice to Mr. Bernard Dunne "For consultancy services as agreed, i.e. 10,000, 2,500 VAT. (VAT registration applied for with effect from 1 July, number not yet advised.)" And that's dated August 1988. Does that suggest that you had done consultancies prior to that date which were

A. No, I think he paid me in advance.

Q. He paid you in advance?

A. I think so, yes.

Q. And did you agree a fee in advance?

A. Well, he offered me that much.

Q. $\frac{1}{2}$ 10,000?

A. Yes.

Q. And you then went and produced this document?

A. And a whole lot yes, yes.

Q. So it was very, very handsome fee, wasn't it?

A. Are you talking about value for money?

Q. In it's a very handsome fee by any standards.

A. Yes.

Q. For work that you describe as merely research work?

A. That's not to denigrate it. I mean, research work is very arduous.

Q. But research work is usually available for much lower fees than that.

A. I don't dispute that.

CHAIRMAN: Just on the general issue, Mr. Pairceir, I think it wouldn't be suggested remotely that somebody who had worked at a hard and distinguished level, probably not for all that spectacular a salary, in Revenue, shouldn't be entitled to some employment post retirement in the private sector. But this is something we have encountered previously. I think when Mr. Pat Kenny, who left a relatively senior position in Revenue, and I think advised Mr. Haughey in relation to some of his tax affairs, I'm just wondering, is there any code of practice or general

rules of engagement that govern the availability and appropriateness of post retirement work? I am thinking in my own profession of the law there are fairly severe restrictions on retired judges being entitled to practice, and there are restrictions, if a solicitor becomes a barrister, on him or her working for the previously employing office for a particular period. And I just wonder, are there any rules of engagement in Revenue?

A. There were not then, but I understand that in more recent times, rules have been introduced. But they were not then.

CHAIRMAN: I see.

Q. MR. HEALY: When Mr. Dunne agreed to pay you or offered you a fee of $\text{€}10,000$, did you describe to him what you'd do for that?

A. I think that my discussion about that was with Mr. Fox.

Q. Was it Mr. Fox offered the fee of $\text{€}10,000$?

A. Sorry?

Q. Was it Mr. Fox offered the fee of $\text{€}10,000$?

A. No, it was Mr. Dunne.

Q. Was that at a meeting between yourself and Mr. Dunne?

A. In Ollie Freaney's office.

Q. And what did Mr. Dunne indicate to you he was paying the money for?

A. Well, whatever it was that Noel Fox and I had agreed that I should do, which was research work and what you might call to provide an interface between the Dunne interests and the legal profession.

Q. The Dunne interests and?

A. The legal profession.

Q. But how would that work, fit into the category of providing an interface between the Dunne interests and the legal profession? That's all strictly legal work. It's only of value to a lawyer.

A. Well, it seems to me to be of also other value in a practical way.

Q. Is it possible that Mr. Dunne was hoping that by offering you $\frac{1}{2}$ 10,000, he might get the benefits of some judgements you had formed in the Revenue? You never got that impression?

A. Never.

Q. It is a very large sum of money by any standards at that time, leaving aside what people might have been paid for research work; compared to presumably what you were being paid as a director or an adviser to various entities, it was still very large, wasn't it?

A. Yes.

Q. Just one last matter, Mr. Pairceir. If you'd turn to Leaf 9 of your documents, I just want to ask you to clarify one thing for me. At this point you were providing more general advice on the question of submissions being made by the Dunes to the Minister for Finance in relation to Discretionary Trust Tax. We're aware they had been making similar submissions, or at least submissions of a similar kind, to earlier governments.

A. Yeah.

Q. And

A. I was drafting some of

Q. Yes, I appreciate that. And at that stage you had left the Revenue for three years, and you were providing, presumably, the benefit of your many years' experience.

But if you look at the note this is the document, which is a draft letter. I think it was intended to go from Noel Fox. It's Mr. Albert Reynolds, TD and Minister for Finance. You have added in the "Mr. Albert Reynolds" and changed "Dear Sir" to "Dear Minister", making the letter more pointed.

If you look at the top two manuscript notes which I think are in your hand; is that right?

A. Yes.

Q. "Mention copy to Taoiseach?" "Should

A. " Ben Dunne send separate letter"

Q. "to Taoiseach."

A. Yes.

Q. The first was a question, "Should we mention this to the Taoiseach"? Or you were saying, "Look, we should consider mentioning this to the Taoiseach"; is that the first thing?

A. Yeah.

Q. And the second thing is, "Should BD send a separate letter to the Taoiseach?"

A. Yes.

Q. Does that suggest that you were aware of a relationship

between the Taoiseach and BD, Ben Dunne?

A. No.

Q. Why would Ben Dunne send a separate letter, of all people?

A. For the reason that you mentioned earlier on, because Mr. Dunne was the head of the firm, the company at that time. And, by the way, making representations for changes in legislation would often be done on a fairly broad front.

Q. But I suppose, in the ordinary way, if you're making a representation to the non-responsible Minister, it's on the basis of some relationship frequently with that Minister; isn't that right?

A. No.

Q. You think not?

A. No.

Q. Thank you.

A. I mean, every time somebody writes a letter doesn't create a relationship.

CHAIRMAN: Mr. O'Neill.

THE WITNESS WAS EXAMINED BY MR. O'NEILL AS FOLLOWS:

MR. O'NEILL: Thank you, Chairman.

Q. Good afternoon, Mr. Pairceir. My name is Hugh O'Neill, and I appear on behalf of the Trustees of the Dunnes Settlement and the 1964 settlement, and I'd like to ask you just a few questions and I can assure you, I won't detain you very long at all.

I want to ask you I think it's a red book, is it, Book Number 65. Do you have that convenient?

A. Just a moment.

Yes, I have the red book now.

Q. If you could open that book at Tab 27, please. And this question that I want to ask you is in the context of the questioning that Mr. Healy made of you to identify, insofar as you could, your motives for agreeing an interest or a reduction in the interest payable.

At Tab 27, I think there is a letter of the 20th March 1987, written by Mr. Reid to Mr. Bowen. This is following do you have that document?

A. Yes, I have, yes.

Q. And this is following to put this in context, this is a few days after the settlement of the Discretionary Trust valuation and consequently the liability to tax. And you'll see he sets out in that letter, on the first page, the liabilities in respect of the late Bernard Dunne, and then on the second page, the liabilities of Norah Dunne. And in the final two paragraphs, you'll see he says: "The total now due in respect of 1(a) and (b) and 2(a) is 2.744125 million?"

A. Yes.

Q. It is to be paid within 21 days of the 16th March to prevent further interest accruing. And then he says the total due in respect of 1(c) and 2(b) this was the 1% interest, annual Discretionary Trust Tax interest payable in respect of the year 1987.

He says: "The total due in respect of 1(c) and 2(b), i.e.,

valuation date 5 April 1987, is $\frac{1}{2}$ 820,000." Do you see the very last paragraph of that letter?

A. Oh, yes.

Q. So what he is saying there is that the 2.7 million, roughly, is due within 21 days of the 16th March, and that there is a further sum of 820,000 becoming due in respect of the valuation date of the 5th April. And I think we had established from other witnesses, and I am sure you are familiar in any event, that you had a three-month period within which to pay the tax without penalty of interest?

A. Yes.

Q. Now, when you were giving your evidence this morning, you may not have been aware that in fact the payment that was made in May, on the 25th May, was not only the 2.7 million, but also the 820,000, which was not actually falling due, or didn't have to be paid until the 5th July.

A. I read it on the papers, yeah.

Q. Presumably that would have been something that would have influenced you in the context of agreeing any reduction in the interest payable; in other words, if the Trustees say, "Look, we have received a letter on the 20th March saying there is 2.7 now due and a further 800,000 due in July, I'll pay the whole lot now, what reduction will you give me? Will you write off the interest in the meantime", presumably that would have been a factor that you would have taken into account in agreeing to reduce the interest?

A. Well, I honestly I don't really know. I appreciate the

point, but I think that when I read it on the paper, I looked at that too, and I think it was about to run into interest fairly soon anyway, after the

Q. It was the payment was made on the 25th May, and the 820 was due on the 5th July, so there was six weeks or thereabouts.

A. Yes.

Q. Now, the only other matter that I want to ask you is, in relation to all the dealings that you had with the Trustees, and indeed their taxation affairs, you didn't confer or attempt to confer any favours on the Trustees, did you?

A. No.

Q. And indeed you weren't asked to confer any favours on the Trustees?

A. I was not.

Q. Thank you, Mr. Pairceir.

THE WITNESS WAS EXAMINED BY MR. BOURKE AS FOLLOWS:

Q. MR. BOURKE: Mr. Pairceir, my name is Conor Burke; I appear with Mr. Connolly on behalf of the Revenue Commissioners.

I just have one very short question to ask you, one matter.

It's just, can you confirm whether, in your dealings with the Trustees of the Dunnes Trust, there was ever a request and whether any request was received by you to in terms of seeking confidential information in relation to the pending C.G.T. appeal?

A. No.

Q. And if I could just further ask you to confirm the position as to whether there was any request of a similar nature in relation to confidential matters requested on behalf of Ben Dunne?

A. No.

Q. Thank you very much, Mr. Pairceir.

CHAIRMAN: Thanks, Mr. Pairceir.

Nothing in conclusion, then, Mr. Healy?

Thank you very much for staying on for the additional session, Mr. Pairceir. At least it alleviates any need to come back next week. I am very much obliged for your assistance.

A. I am very much obliged to you, sir.

CHAIRMAN: There is a possibility of some very brief further evidence on this particular matter, but certainly the substantive evidence has concluded. And because of the obvious urgency with dealing with remaining phases of public evidence, I will cause, in the usual manner, an Internet announcement and notify the usual persons as regards our prompt resumption.

Thank you.

THE TRIBUNAL ADJOURNED UNTIL FURTHER NOTICE.