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REPORT

OF

THE TRIBUNAL OF INQUIRY

INTO

Dealings in Great Southern Railways Stocks
between the first day of January, 1943,
and the 18th day of November, 1943.



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REPORT
of
THE TRIBUNAL OF INQUIRY
into
DEALINGS IN GREAT SOUTHERN RAILWAYS STOCKS
BETWEEN THE FIRST DAY OF JANUARY, 1943 AND
THE 18TH DAY OF NOVEMBER, 1943.

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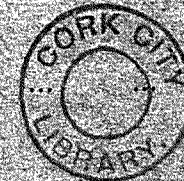
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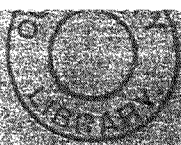
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Report of The Tribunal of Inquiry into dealings in Great Southern Railways Stocks between the first day of January, 1943 and the 18th day of November, 1943.





Part One.

Introductory.

On the 24th November, 1943, Dail Eireann passed the resolution following—

“That it is expedient that a Tribunal be established for inquiring into the following definite matters of urgent public importance, that is to say:—

“To investigate and report on the dealings in Great Southern Railways Stocks between the 1st day of January, 1943, and the 18th day of November, 1943, and the extent, if any, to which any such dealings were attributable to the improper use or disclosure of information concerning proposals for the capital re-organisation of the Great Southern Railways.”

On the 25th November, 1943, Seanad Eireann passed a resolution in the same terms.

Pursuant to the said resolutions the Minister for Industry and Commerce (hereinafter referred to as “the Minister”) by Order, dated the 1st December, 1943, appointed us “to investigate and report to him on the following matters:—(a) the dealings in Great Southern Railways Stocks between the 1st day of January, 1943, and the 18th day of November, 1943—(b) the extent, if any, to which any of such dealings were attributable to the improper use or disclosure of information concerning proposals for the capital re-organisation of the Great Southern Railways.”

The said Order also directed that the Tribunals of Inquiry (Evidence) Act, 1921, (as adapted) should apply to the Tribunal.

The Tribunal met as soon as possible to discuss matters of procedure, methods of investigation, and the position generally. It was decided to ask for the appointment of a Secretary independent of all individuals or interests likely to be concerned. At our request Mr. Malcolm H. G. Ellis, Barrister-at-Law, was, on the 9th December, 1943, appointed to be our Secretary.

At the outset we directed him to take certain steps to obtain necessary information. Pursuant to our instructions he wrote requesting precise and detailed information relevant to the subject matter of our inquiry to the following persons:—The Secretary and Chairman of the Great Southern Railways Company (which, for the sake of brevity, we will hereafter call the “Company”), to every Stockbroker and every Bank in the State, and to the Secretary of the Department of Industry and Commerce. In addition, he inserted an advertisement in the three Dublin morning papers and in the Cork Examiner requesting any person in a position to assist the Tribunal to communicate with him. Particulars of these letters and the advertisement will be found in the Schedule Part One. The information supplied in response to these preliminary inquiries has in every case, where it is relevant and material, been verified upon oath.

We held a preliminary sitting on the 22nd December, 1943, with a view to ascertaining what assistance we were likely to obtain, who

was desirous of appearing or of being represented before us, and the names of probable witnesses. At this sitting the Chairman read the Minister's Order, and the Tribunals of Inquiry (Evidence) Act, 1921, and repeated the request for information and the invitation contained in the advertisement. Mr. Carrol O'Daly, Barrister-at-Law, appeared for the Attorney General who offered to give the Tribunal all the assistance in his power. Mr. R. C. Ferguson, Secretary of the Department of Industry and Commerce, stated that he had been instructed by the Minister to give the fullest information required. Mr. Gordon Bradley, Solicitor to the Company, stated that he was instructed to say that the Company and the Directors individually would do all in their power to facilitate the Tribunal, but informed us that it would take time to comply with our Secretary's request for information and feared that the return asked for would not be ready before the 20th January, 1944. At all subsequent sittings Mr. Cecil Lavery, S.C., and Mr. William Fallon, Barrister-at-Law, represented the Company, instructed by Mr. Bradley. Mr. Eoin O'Mahony, Barrister-at-Law, instructed by Mr. David H. Charles, appeared for the Great Southern Railways Stockholders' Protection Association, and for Mr. J. Corcoran of Cork. He also offered the fullest assistance.

In exercise of the discretion given us by the Tribunals of Inquiry (Evidence) Act, 1921, we had decided to hear in camera the evidence of any witness who was asked to disclose any matter relating to the affairs of clients or of other persons which we considered confidential, and of any witness whom we asked for detailed information of his own private affairs other than his dealings in the Company's stocks. At this preliminary sitting we referred to the wide powers we possessed of compelling the production of evidence, and expressed the hope that it would be unnecessary to exercise them. We emphasised our discretion to hear evidence as to confidential matters in secret session.

Following our preliminary sitting we became aware that the Banks, while anxious to facilitate our inquiry, were apprehensive lest, in furnishing, except under compulsion by legal process, the information for which we had asked, they might in some quarters be regarded as committing an unjustifiable breach of the confidence of their customers. Accordingly, we issued summonses to the appropriate officers to attend to give evidence and produce the required documents at a special sitting on the 29th January, 1944, on which date they all attended and produced on oath the documents which were duly received in evidence.

At this stage it was apparent to us that, while all persons who had appeared before us were willing to assist us, nobody was prepared to undertake the onus of making any assertion or accusation or of proving any case. In the absence of any person willing to assume the character of plaintiff or prosecutor there were naturally no defendants. For want of parties in the ordinary sense, the Tribunal itself had to assume the task of endeavouring to collect evidence, and information which might lead to evidence. In so doing, it was necessary, in the first instance, provisionally to accept statements at other than first hand and matters of hearsay which were, of course, not legal evidence. This had

to be done in an effort to trace such second-hand material and rumours, of which there was no scarcity, to their original source—a tedious and frustrating process. In arriving at our conclusions, we have relied on legal evidence only and on facts strictly proved, and have excluded all other matters from consideration.

Our requests for information yielded a number of returns which our Secretary, with much skill and labour, was able, by a process of abstraction and collation, to reduce to a convenient form—namely tabular. Much documentary material was also furnished to us or put in evidence, some of which was highly confidential. We do not consider it necessary to refer to this material or to the returns in detail or to list them in the Schedule to our report.

So soon as we were possessed of sufficient information, we began our regular sittings on the 21st February and these continued, with intervals, until the 23rd June. Our public sittings only were announced or reported in the Press. In addition to these, and to many sittings in camera, we found that many private conferences amongst ourselves were necessary.

There has been no delay that could have been reasonably avoided. The Chairman and Judge O'Brien had to continue to discharge their judicial duties unaided. Judge Davitt was afforded assistance whenever he so requested, but owing to the unprecedented congestion of the criminal business in the Dublin Circuit Court this assistance was in any event necessary. It was found difficult for all three members of the Tribunal to be available at the same time without causing serious interference with the work of their respective Courts. Judge O'Brien had to adjourn the Easter sitting of the Circuit Court in Clare in order to be present at sittings of the Tribunal.

A considerable amount of time was occupied between sittings in studying in detail the growing mass of information and evidence accumulated. The whole task of exploratory investigation fell to be performed by our Secretary unaided. Wherever it seemed to us necessary, he inspected the entire correspondence of stockbrokers for the period under review and obtained copies of all relevant and material letters. Wherever we considered it advisable, we asked for and were afforded full authority to inspect the Bank accounts, both current and deposit, of certain witnesses, as well as lists of securities held against advances and other Banking records. Every substantial item which appeared to us capable of representing a payment received or made in respect of a dealing in the Company's stocks by the witness on behalf of any other person, or vice versa, was examined and vouched by the production of lodgment dockets, paid cheques, receipts or otherwise.

The Minister tendered as witnesses himself and such officials of his Department as we might require. The Chairman and the Directors of the Company did likewise. Colonel The O'Callaghan, whose recent death we sincerely regret, offered himself as a witness to assist us generally, and the Minister for Local Government and Public Health came forward to give evidence with regard to a matter which might otherwise possibly have been thought to affect him personally. With these

exceptions no one appeared in response to our advertisement or our repeated requests. Every other witness examined attended either at our express invitation or upon summons.

Mr. Cole, then Deputy for Cavan, who asked in Dail Eireann the question which proved to be the genesis of our inquiry, and several other Deputies who supported him in the discussion which ensued, were called as witnesses. None was able to depose to any fact which constituted direct evidence of any disclosure of information or to assist us in any way other than by testifying to the existence of rumours and public comment, and by adverting to matters of common knowledge upon which they had based their demand for a public judicial inquiry. Mr. Cole produced many newspaper cuttings and extracts upon which, inter alia, he had based his question.

The furnishing of the information requested by us in many cases involved much time, trouble and expense. In the case of the Company we have been given to understand that the preparation of the returns made involved 1,467 hours work by its employees at a cost of £220. The returns made by the Banks and the Stockbrokers likewise occasioned work and expense in varying degrees which, though not so extensive as in the case of the Company, must in some cases have been quite substantial. All the returns made to us were excellently prepared, and it is right to mention that, with one or two trivial exceptions, all persons from whom we sought information seemed genuinely anxious to give us every assistance. We include in Part Two of the Schedule the names of the witnesses examined.

We have now exhausted every source of information which, in our opinion, was calculated to assist us in our inquiry.

Part Two.

Dealings in the Company's Stocks between 1st January, 1943
and 18th November, 1943.

On the 17th November, 1943, Mr. Cole, T. D. in Dáil Éireann asked the Minister the following question —

"If he is aware of the extensive Stock Exchange transactions in Great Southern Railways Stocks since 20th August, 1943, and that the Stock Exchange valuation of the total Great Southern Railways Stocks had increased by over £2,500,000 sterling since that date, as a result of inspired speculation, and if he can state the origin of the leakage of information as to the proposed scheme of re-organisation which produced this speculation, and, if not, whether he will have investigations made in his Department and otherwise on the matter?"

The Minister replied:—"The information available to me does not indicate that Stock Exchange transactions in the stocks of the Great Southern Railways Company before or subsequent to October 20th were either extensive or abnormal. During the period of two months prior to that date, the approximate weekly average number of such transactions was 88 as compared with a weekly average of 62 transactions during the year 1942.

"The value of the stocks involved in such transactions averaged 64 per cent. of the total value of the Company's stocks. The average prices quoted during that period for the Company's guaranteed preference, preference and ordinary stocks were below the average prices of those stocks during the corresponding period of 1942. The average price of the debenture stock at 66 showed an increase of 10s. on the average price during the same period of 1942. The rise in prices which took place after the publication of the Company's capital reconstruction scheme was due, probably, to the fact that the number of prospective buyers exceeded considerably the number of sellers. The average weekly number of transactions recorded during the period of three weeks to November 10th was 170, the value of the stocks involved in such transactions averaging 64 of 1 per cent. of the total value of the Company's stocks.

"I have no reason to believe that any transactions in the stocks of the Company since August 20th were, as suggested in the question, due to a leakage of information as to the proposed scheme of re-organisation. The reconstruction proposals were, I am informed, issued to the shareholders as soon as practicable so as to reduce the possibility of speculation and to give existing shareholders the earliest intimation of the proposals which the directors had under consideration. If the Deputy has any evidence to support the statement in his question, I should be glad if he would communicate that evidence to me. I should strongly deprecate the publication of this allegation by the Deputy if he is not in a position to substantiate it."

We heard the evidence of Mr. Hugh Wilson, the President of the Dublin Stock Exchange for the year 1943, of Mr. James Davy, the President of the Dublin Stock Exchange for 1944, of Mr. Dominic Morrogh, the President of the Cork Stock Exchange for 1944, of Mr. William Campbell, the Secretary of the Dublin Stock Exchange,

of a number of other Stockbrokers, including members of six firms whose returns showed the largest dealings in the Company's stocks between Monday, January 4th, 1943, and Saturday, October 23rd, 1943, being the Saturday immediately preceding the publication of the proposals on Monday, 25th October, to which last mentioned date we will hereafter refer as "the date of publication."

During January, 1943, there was a certain amount of activity in the Company's stocks. Such activity is not unusual in anticipation of the declaration of a dividend, but prices fell somewhat in the latter half of the month and the first half of February. About the middle of February it was announced that no dividend would be paid on the Guaranteed Preference or Junior stocks. This announcement caused great disappointment and prices slumped in consequence. The market then more or less 'sat down,' pending the Chairman's speech at the annual general meeting on March 3rd. This speech was generally regarded as gloomy and had a very depressing effect on the market. Some holders proceeded to get rid of their stocks and this occasioned some activity and a sharp fall in prices. On the 24th March Mr. Davin in Dáil Éireann addressed a question to the Minister arising out of the Chairman's speech and, following the Minister's reply which was non-committal, prices again fell slightly. There was little activity or fluctuation for some weeks but prices recovered somewhat in May. On the 26th May the Minister spoke on the Estimate for his Department and, following his speech which was not regarded as encouraging, prices fell again and the market remained slack for some time. We were informed by some of the Stockbroker witnesses that during this period, the precise date being left in uncertainty, the Stock Exchange considered suspending all dealings in the Company's stocks until the position became clearer. One Stockbroker remarked that at this time 'you would have to go to look for a buyer,' and another described the state of the market as 'stagnation.' There was little improvement in the amount of business done until the latter half of August, though prices rose substantially in July and 'there were buyers about.' This may have been due partly to the increases in Railway rates which became operative on the 1st July and partly to a series of purchases by two investors with whom we deal specifically later. From the 23rd August there was very considerable activity indeed and prices rose steadily till the 8th September when the Debenture stood at 63½ and the Guaranteed Preference at 42½. A sharp fall then occurred and in the following week these prices dropped to 60 and 38 respectively. Mr. Wilson did not account for this fall, but one witness may have been correct in attributing it to the effect caused by meetings of protest by lorry owners and road carriers in the Western and other counties in which road transport became controlled as from the 1st September. On the 17th September the tide seems to have turned and prices rose steadily, and by the 8th October the Debenture had reached 73½ and the Guaranteed Preference 46½ while Preference and Ordinary touched 24 and 21 respectively. After that, prices eased slightly and the stocks were quoted at 72, 45, 23 and 21½ on Friday, 22nd October, which was the last day for business on the Stock Exchange before the date of publication.

From August onwards the dealings in the Company's stocks were described to us as "absolutely abnormal," "a boom," "absolutely hectic," "inexplicable," and such seems to have been the general opinion on the Stock Exchange. The sudden activity apparently gave rise to a suspicion, which seems to have been almost universal in the minds of Stockholders, that "somebody must know something" and that there was leakage of information. As one Broker said "I think we were all rather suspicious of one another. When I was buying they thought I had information, and when they were buying I thought they had information." One unusual feature of this activity adverted to by several Stockbroker witnesses was the considerable number of purchases taken in the name of Bank nominees. There was a tendency in some quarters to attach a sinister significance to this circumstance, but we are of opinion that such a view is mistaken. Several of the larger purchasers who gave evidence were in the habit of taking practically all their purchases in this way, owing to the favourable facilities afforded by the Banks when this procedure was adopted.

There seems also to have been an impression that large blocks of stock were purchased through Belfast or London Agents and the purchasers thus successfully concealed from view. We are satisfied that this did not happen. Mr. Wilson told us that virtually all dealings in the Company's stocks are transacted in Dublin which is the centre of the Irish Railway market, and that nearly all business from Cork and Belfast is done through Dublin Brokers. One substantial purchase was made by a Dublin firm managed from London which always buys through a Belfast Broker, who in his turn deals through a Dublin agent. We were given full particulars of this transaction and found everything in order.

Many wrong impressions with regard to the extent and nature of the dealings which did take place in the Company's stocks appear to have gained currency, and these can be adequately and satisfactorily corrected only by a statement of the actual facts. Such a statement is, perhaps, rendered all the more necessary because the figures supplied to the Minister as to the comparative volume of business done in 1942 and 1943 upon which he based his reply to Mr. Cole's question appear to have been compiled under a complete misapprehension as to the true significance of the particulars from which they were prepared and to have little or no relation to the actualities of the situation. They were described by some of the Broker witnesses as "completely illusory."

The volume of business done in relation to any particular stock is not readily ascertainable, and, indeed, as far as the Company's stocks are concerned, the volume of business transacted in 1943 could not be, and was not in fact ascertained until our Secretary compiled the table which we include below. The Stock Exchange has no record of the volume of business done as prices alone afford no indication. "Markings" are of no value in this respect since, there might be thirty or forty transactions for one marking on the Stock Exchange list. The Company's Register does not give any reliable indication either, as stock may change hands two or three times and only the ultimate transfer may be registered.

The following table, compiled from returns furnished to us by brokers, shows the total nominal amounts of stock purchased for each week ending Saturday, from the 9th January, 1943, down to and including the week ending Saturday, November 20th —

Week ending :	ORDINARY Total Purchases	PREFERENCE Total Purchases	GUARANTEED Total Purchases	DEBENTURE Total Purchases
January 9th	2,317	3,838	5,950	5,060
" 16th	1,519	1,454	6,350	3,505
" 23rd	1,630	6,750	8,909	10,220
" 30th	—	7,900	4,050	6,239
February 6th	900	4,500	4,000	4,201
" 13th	700	5,050	18,600	5,775
" 20th	3,257	5,700	20,096	5,405
" 27th	3,900	9,308	11,500	10,644
March 6th	5,400	10,125	4,500	7,800
" 13th	1,532	4,882	10,206	15,183
" 20th	783	2,165	5,288	3,466
" 27th	754	3,200	3,440	9,350
April 3rd	133	880	4,000	7,977
" 10th	719	3,437	6,400	10,918
" 17th	1,708	—	2,875	4,500
" 24th	552	841	3,850	825
May 1st	347	1,800	754	2,400
" 8th	433	2,368	1,397	2,642
" 15th	481	4,072	2,783	8,701
" 22nd	568	1,868	2,945	4,600
" 29th	2,795	9,161	7,713	9,395
June 5th	1,579	3,467	7,862	7,250
" 12th	25	3,628	1,975	2,175
" 19th	384	500	—	1,980
" 26th	619	4,031	1,350	11,193
July 3rd	187	587	4,213	8,516
" 10th	913	2,733	5,537	14,782
" 17th	1,242	8,784	5,735	9,961
" 24th	894	1,228	4,500	5,657
" 31st	459	7,364	4,313	5,400
August 7th	150	2,950	100	3,750
" 14th	800	2,532	2,574	7,745
TOTAL (32 weeks)	37,705	127,103	173,745	213,225
August 21st	1,723	2,761	6,285	11,925
" 28th	5,241	9,493	4,009	21,708
Sept. 4th	3,818	14,666	16,135	18,185
" 11th	730	19,858	9,559	9,020
" 18th	12,090	7,721	16,852	10,610
" 25th	1,784	17,878	18,920	23,132
October 2nd	8,632	7,579	9,811	9,608
" 9th	13,559	22,004	49,239	35,900
" 16th	5,570	25,240	20,352	48,877
" 23rd	14,203	25,794	25,091	58,011
TOTAL (10 weeks)	70,347	152,904	166,473	246,976
October 30th	28,453	100,670	85,950	144,379
November 6th	13,332	59,876	49,800	102,738
" 13th	12,800	57,774	32,752	43,725
" 20th	4,491	21,932	27,059	36,074
TOTAL (4 weeks)	59,076	240,252	195,561	326,916

This table corroborates those witnesses who ascribed the beginning of the heavy buying to the month of August, and more particularly indicates the week ending August 21st as the actual commencement. It will be seen that during the ten weeks commencing August 14th and ending the Saturday before the date of publication, there was more buying of the Company's stock than in the preceding thirty-two weeks. The nominal value of Debenture Stock bought during these ten weeks was 53.67% of the total for the whole forty-two weeks. The corresponding percentages for the other stocks were: Guaranteed Preference 48.93%, Preference 54.61% and Ordinary 65.10%. The table also shows that more stock was bought in the four weeks ending 20th November, 1943, than during the ten weeks mentioned.

The following table showing the appreciation which occurred in the nominal value on paper of the stocks as a result of the buying during the same ten weeks is also of interest:—

Stock	Nominal Value	Price 13/8/43	Value 13/8/43	Price 22/10/43	Value 22/10/43	Appreciation
Debenture	£ 7,076,972	57	£ 4,033,874	72	£ 5,096,420	£ 1,061,546
Guaranteed Preference	1,943,167	32	621,813	45	874,425	252,612
Preference	1,776,224	15½	275,315	23	408,532	133,217
Ordinary	777,927	10½	78,765	21½	165,309	86,544
TOTAL	11,574,290		5,009,767		6,543,686	1,533,919

The following table shows the nominal value and percentage of the total purchases of each class of stock during the relevant periods in comparison with the total amount in nominal value of each class of stock:—

Stock	Nominal amount of Stock	Purchases Between 3/1/43 & 23/10/43		Purchases Between 25/10/43 & 20/11/43	
		Nominal Amount	% of Stock	Nominal Amount	% of Stock
Debenture	£ 7,076,972	£ 460,201	6.5	£ 326,916	4.6
Guaranteed Preference	1,943,167	340,218	17.5	195,561	10.1
Preference	1,776,224	280,007	15.8	240,252	13.5
Ordinary	777,927	108,052	13.9	59,076	7.6
TOTALS	11,574,290	1,188,478	10.3	821,805	7.1

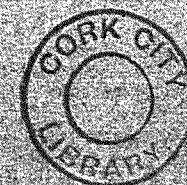
It will be seen that the total nominal amount of stock purchased prior to the date of publication is only 10.3% of the total nominal capital of the Company.

Findings as to Dealings in the Company's Stocks.

We are now in a position to state our finding upon the first matter mentioned in our terms of reference, namely, the dealings in the Company's stocks between the 1st January, 1943 and the 20th November, 1943.

We find that there was an abnormal amount of dealing in the stocks of the Company during the ten weeks preceding the date of publication and thereafter down to the 18th November, 1943, the end of the period under review.

We are of opinion that the public, for a time at least, had a greatly exaggerated view as to the extent and nature of such dealings. As will appear later, many of the larger purchasers bought to hold, and, in fact, did retain their stocks up to the time of giving evidence. We believe that profit taking during the period under review was on a much smaller scale than has been imagined.



Part Three.

The extent, if any, to which any dealings were attributable to the improper use or disclosure of information concerning proposals for the capital re-organisation of the Great Southern Railways.

Before dealing with this question it is necessary to advert to our terms of reference and to relate them to this part of our report in an endeavour to make clear our views as to the interpretation to be given to the expression "improper use or disclosure of information." As we have found, there were abnormal dealings in the Company's stocks during the ten weeks immediately preceding the date of publication. It will also be seen from the next section of our report that there was a considerable amount of relevant and material information as to the Company's affairs and prospects legitimately available to any careful and intelligent investor who might properly make use of it in determining his policy with regard to possible dealings in the Company's stocks. There can be no question of disclosure of such information as it had already been made public. For the same reason, there can be no question of its improper use. We are not, therefore, except indirectly, concerned with the use or disclosure of information of this type. We are, however, directly concerned with the improper use or disclosure of relevant and material information which had not been made available to the public, but yet must at some time prior to the date of publication have been properly in the possession of various persons including the Minister, Mr. Reynolds, some higher officials of the Departments of Industry and Commerce and Finance, and, finally, the Directors of the Company.

In this context the word "improper" is not easy to define with precision. It is clearly not synonymous with "illegal," nor do we think that merely equating it with "unfair" helps matters very much. In our opinion the expression "improper use or disclosure of information" has the following connotations:—

- (a) The right of some person to possess the information for the purpose of discharging his duties whether fiduciary or official, or both;
- (b) The right to use it for the same purpose;
- (c) The right to disclose it to others invested with similar rights or charged with similar duties;
- (d) The obligation not to use or disclose it in any other way or for any other purpose.

If any such person uses such information for his own advantage or otherwise than in discharge of such duty, then such use is improper. This is particularly the case where the dealing is with a person for whose benefit the obligation of secrecy is imposed, e.g., a director dealing with a stockholder of the Company. Likewise the imparting of such information to any person not under a like obligation of secrecy is improper disclosure.

We regarded the question of whether or not there had been improper use or disclosure of information, as above defined, as the more important branch of our Inquiry. As a result, a mass of evidence on the subject was accumulated. We do not intend to deal with all this evidence as a considerable portion represents the result of our examination of matters and incidents which, appeared potentially significant and which it was impossible to ignore, but which, on further examination, proved to be irrelevant or unimportant. To enable an analysis of the relevant evidence to be made on the basis which we have indicated, we think it essential to recall and summarise the history of events as known to the public prior to the date of publication as well as to give an inner history of events leading to the Capital re-organisation proposals. We also propose to deal generally with the evidence as to rumours concerning the affairs of the Company which were prevalent during the period under review, and, in some details, with the evidence of certain witnesses, (including most of the larger purchasers), whose dealings by reason of time, extent or other circumstances appear to us to be worthy of such examination.

For the sake of clarity we have divided this part of our report into the following sections:—

1. The Public History of Events Leading to the Proposals for Capital Re-organisation.
2. The Inner History of Events Leading to the Proposals for Capital Re-organisation.
3. Miscellaneous matters arising on the evidence and our conclusions thereon.
4. A Summary of the Evidence as to the Rumours concerning the Affairs of the Company current during the period under review.
5. A Summary of the more important Evidence of the following witnesses:—
 - (a) Mr. A. P. Reynolds, the Chairman of the Company.
 - (b) The Rt. Honourable James MacMahon, a Director of the Company and Mr. David Frame.
 - (c) Mr. W. J. Tunney and the other witnesses from the firm of Messrs. P. W. Tunney & Co., Stockbrokers.
 - (d) Mr. Charles Cashin.
 - (e) Mr. John Maher, now Controller and Auditor General.
 - (f) Mr. Michael F. O'Hanlon.
 - (g) Mr. Blayney Hamilton.
 - (h) Messrs. Patrick Murphy and Daniel J. O'Donohoe.
 - (i) Mr. James P. Goodbody, a Director of the Company.
 - (j) Mr. John O'Brien, a Principal Officer in the Department of Industry and Commerce, Transport and Marine Branch.
 - (k) Mr. Timothy O'Driscoll, also a Principal Officer in the Department of Industry and Commerce, Transport and Marine Branch.
 - (l) Mr. John Dooly, an official of the Company.
6. General Comments and Conclusions on all the Evidence.
7. Findings as to Improper Use or Disclosure of Information.

1.—Public History of Events leading to the Proposals for Capital Re-organisation.

On the 22nd December, 1938, "The Tribunal of Inquiry on Public Transport" was appointed by the Minister. The Majority Report was dated the 4th August, 1939, while Dr. Henry Kennedy's Minority Report was dated the 11th August, 1939. This was very shortly before the outbreak of war, and the Report was not published till the 18th July, 1941.

Some of the recommendations contained in the Majority Report were:—

(a) The Reconstruction of the Board under a Chairman nominated by the Government;

(b) That the borrowing powers of the Company be increased and that the Government should fully guarantee the repayment of principal and the payment of interest in connection with an issue of a further £1,250,000 Debenture Stock.

(c) That if the net income of the Company were insufficient to enable the annual payments of Debenture interest or other fixed charges to be made to persons who, in the event of default of such payments, had the right of appointment of a Receiver, the Government should guarantee such payments by transferring to the Company out of a Special Fund the amount by which the Company's net income was insufficient to enable such payments to be made, not exceeding in any one year the full amount of the annual liability of the Company in respect of Debenture interest, Rentals and other fixed charges (Report, pp. 116, 117). Dr. Kennedy in his Minority Report recommended State ownership and operation (Report p. 164). Such were the alternatives.

By the Emergency Powers (No. 152) Order, 1942, the Government appointed Mr. A. P. Reynolds to be Chairman of the Company and conferred upon him certain overriding powers and also reconstituted the Board of Directors. The new Board consisted of Mr. James P. Goodbody, Major Hugh Henry, The Right Hon. James MacMahon, P.C. and Dr. William Lombard Murphy.

This Order came into effect on the 24th February, 1942.

On the 7th December, 1942, the declaration of North Mayo as a "Scheduled Area" became operative under the provisions of the Emergency Powers (Mechanically Propelled Vehicles) (Scheduled Areas) Order, 1942, and virtually all road goods traffic in that district was thus diverted to the Company.

On the 27th January, Mr. James Dwyer was co-opted a Director to fill the vacancy on the Board caused by the death of Dr. William Lombard Murphy.

At the Annual General Meeting of the Company on the 3rd March, 1943, the Chairman, amongst other things, stated:—

- (1) That the revenue for 1943 was already considerably down as compared with the same period in 1942;
- (2) That in his view obsolescence of equipment and the excessive number of workers required had brought the

with Road Services;

- (3) That a post-war plan for the re-organisation and co-ordination of road and rail services was under consideration, and that when this was completed the country would have a transport system of which it would be justly proud at a cost it could afford to pay;
- (4) That considerable new capital would be required and if Investors were to be asked to subscribe to it they must be given some guarantee (a) that this Capital would not be lost, and (b) that payment of interest on it would be certain;
- (5) That there was no reason to think that the Railway could pay dividends on its existing capital no matter how much was asked for the service rendered;
- (6) That there must be a reconstruction of the Capital, and that whatever was ultimately agreed to be the value of the Stockholders' interest should rank equally with and carry whatever guarantees were given to those subscribing new capital;
- (7) That it was the intention to proceed at once to formulate proposals with a view to stabilising the capital position;
- (8) That an increase in rates and fares was being sought from the Minister.

In Dáil Éireann on the 24th March, 1943, the Minister in reply to a question by Mr. Keyes stated:—

"I am aware that at the recent Annual General Meeting of the Great Southern Railways Company the Chairman indicated that the Company proposed to seek an Emergency Powers Order to increase rail rates and fares. The application has not yet been received, and I am not in a position to state in advance what decision may be taken on any such application . . ."

Mr. Davin then asked the Minister:—

"(a) whether he is aware that Mr. A. P. Reynolds, Chairman of the Great Southern Railways, stated at the Annual Meeting of shareholders on March 3rd, that he proposed embarking upon a re-organisation of the Company including a re-organisation of its capital;

"(b) if he will say whether he has been consulted by Mr. Reynolds as to the nature of the re-organisation contemplated, and if so,

"(c) whether he can state if the proposed re-organisation is along the lines recommended in either the Majority or the Minority Report of the Transport Tribunal, and, if so, which;

(d) whether he will take steps to ensure that the proposed re-organisation, as a matter of public interest and of vital concern in the community, will be undertaken only by the authority of the Oireachtas?"

The Minister: "The answer to the first part of the Deputy's question is in the affirmative. As regards the other parts I have discussed from time to time with the Chairman of the Company its position generally and, from the discussions, certain proposals have emerged as a basis for consideration. Considerable examination

and development will be necessary before a practicable scheme will be available. The recommendations of the Transport Tribunal will be borne in mind in such examination and any re-organisation to be effected will be the subject of legislation."

On the 1st April, 1943, the control of road transport and its diversion to the Company was extended to South Mayo and West Galway.

On the 26th May, 1943, in his speech on the estimate for his Department, the Minister stated in Dáil Éireann:

"... However, the position is, as I think the employees of the Railway Company must know, that the whole organisation upon which they are dependent for a livelihood is in jeopardy. There is no useful purpose to be served by concealing that fact from them. That organisation cannot be carried on indefinitely at a loss. It is making a loss and it will continue to make losses unless the general re-organisation which the Government contemplates and to which Mr. Reynolds referred at the Annual Meeting is successfully carried out. I cannot even guarantee that the efforts to accomplish that re-organisation will be successful but I can guarantee that they will be made."

And later he said:—

"On the general question of railway policy I merely want to say that I recognise that the efforts made, whole-hearted though they were, to save the railways of the country by the legislation of earlier years, have proved insufficient. It is clear that we must go further than that. I think that we should not wait until after the end of the war to begin the process of re-organisation. It is necessary, in my opinion, that the process of re-organisation should be begun earlier. As Mr. Reynolds intimated to the Company at the Annual Meeting, re-organisation proposals are at present being worked out and will in due course be completed. If it should be my function, they will then be prepared in the form of legislation for submission to the Dáil."

On the 27th May, 1943, the Company was authorised by the Emergency Powers (Increase and Cancellation of Exceptional Rates of the Great Southern Railways) Order, 1943, to increase its rates for merchandise and livestock and the higher rates became operative on 1st July, 1943.

On the 16th June, the Minister in the course of an election speech at Inchicore said:—

"It is the Government's belief that the Railways can be so re-organised and developed that they can, if properly managed and co-ordinated with the necessary supplementary services on the roads, provide long-distance transport for goods and passengers, better, faster and cheaper than road transport can provide, if all the appropriate costs are charged against road services. But it will be a long hard job to create that situation. It will necessitate the provision of large capital sums which cannot be procured from private sources. If the State, as it must, provides the new capital directly or by guarantee, it will have to be given such powers of control over the management of the undertaking as will enable it to ensure that the main aims of transport policy are in fact attained. The

vast re-organisation of the Company's equipment which is contemplated will take some years to complete. It will result in expanded employment in the production of the equipment but it cannot be begun until supplies of necessary materials again become available from abroad.

"It is the Government's view, however, that the re-organisation of the Company's capital and administration should not be delayed until after the war merely because the re-equipment of the system cannot be begun before it ends. The framing of the necessary legislation has been begun. If the present Government is re-elected it is expected that the general framework of the measure will be completed at an early date and the drafting of the necessary Bill put in hands."

On the 1st September, 1943, the control of road transport was further extended to Roscommon, East Galway and parts of Longford, Offaly, Laoighis, Westmeath and Tipperary and on 1st October, 1943, to Sligo and Leitrim. Notice of the intention to extend the "controlled areas" had already appeared in the Press in July, 1943.

The actual proposals for the re-organisation of the Capital of the Company were announced by the Chairman to the Press on Sunday, 24th October, and appeared in the daily newspapers the following morning, Monday, 25th October, 1943.

It will thus be seen that before the date of publication the public had notice of the following:—

1. That the railways were regarded as being a vital and essential service;
2. That a post-war plan for the modernisation and physical reconstruction of the Company's undertakings was in contemplation;
3. That the re-organisation and stabilisation of the Company's capital were essential and that proposals dealing with these matters were, in fact, under consideration and that preparations were being made for the necessary legislation;
4. That there was a probability of a Government guarantee both for existing charges and future capital with a possible alternative of State acquisition and operation of the railways;
5. That the Company had been given a virtual monopoly of the road transport services in certain districts, and that the control scheme was being gradually extended to other areas;
6. That the rates for the carriage of merchandise and livestock had been substantially increased as from 1st July, 1943.

Another matter of which the public, or a large section of it, cannot have failed to notice was the marked improvement in the Company's passenger traffic. By the early summer, passenger trains were becoming crowded even to an uncomfortable degree, and time schedules were again receiving their due measure of respect. Moreover, goods traffic had likewise increased substantially and was being carried at considerably enhanced rates. These circumstances the business community had good cause to appreciate by reason of the delay due to congestion and the increased cost.

2.—Inner History of Events leading to the Capital Re-organisation Proposals.

After Mr. Reynolds was appointed Chairman of the Company he came to the conclusion that the Company could not continue to pay its Debenture Interest without an increase in its rates and this matter became the subject of discussion between him, the Department of Industry and Commerce and the Minister. Mr. Reynolds' view was that an increase of twenty per cent. in railway rates was necessary, but that it would be disastrous to increase rates without a plan for the future which the trading public could understand and appreciate.

In a memorandum addressed to the Minister, dated the 6th February, 1943, Mr. Reynolds expressed these views, discussed the financial position of the Company, the need for expenditure on renewals and replacements and the necessity for re-organisation of the whole railway to bring it into line with present day requirements. He stated his opinion that if the country were to be provided with an efficient transport system, a policy should be adopted at once and a long term plan of re-organisation should be drawn up. If the Minister shared his views then he thought an arrangement should be made to deal with the capital position. He pointed out that the entire Capital amounted to £12,691,451 and that, while Debenture interest had been paid to date, there were two years arrears of dividend on the 4% Guaranteed Preference Stock, and no dividend had been paid for years on the Preference and Ordinary Stocks.

He suggested that a seven years plan should be adopted and a Statutory Company formed with a Capital of not more than £10,000,000 with only one kind of stock, bearing a low rate of interest, which would buy out existing stockholders. The Government would have to guarantee capital and interest for a number of years and would also have to guarantee the capital and interest on any money required to be borrowed for the purpose of reconstruction.

His idea was that ultimately all public transport would come under the control of the new Company and it might even be advisable to absorb other Transport Companies at once.

He asked the Minister to indicate a policy which he could announce at the General Meeting to be held on the 3rd March, 1943.

Mr. Reynolds was at once informed that it would be impossible for the Minister to indicate a policy before 3rd March, owing to the Government's many preoccupations. He, therefore, drafted his speech for the Meeting in the form in which it was delivered, having first obtained the approval of the Minister.

The Minister lost no time in considering Mr. Reynolds' Memorandum and in a minute to the Secretary of the Department dated the 27th February, 1943, stated certain tentative conclusions at which he had arrived as to the lines of investigation:—

- (1) The formation of a Statutory Company with a capital of, say, £10,000,000 in the form of fixed interest Bonds, guaranteed as to interest by the Government for a period

- (2) This company to acquire compulsorily all the interests of shareholders and debenture holders of the Great Southern Railways Company and the Dublin United Transport Company;
- (3) These two Companies to be amalgamated under one management;
- (4) During the seven years period, additional capital required by the company to accomplish the re-organisation of the concern, to modernise and standardise equipment, etc., to be guaranteed as to principal and interest by the Government;
- (5) The Chairman of the company to be nominated by the Government with the same powers as those now possessed by Mr. Reynolds;
- (6) A Managing Director to be appointed by the Board subject to the approval of the Minister for Industry and Commerce;
- (7) The Board to be elected by the Stockholders.

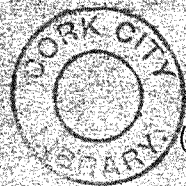
He asked to have the Department's observations on the proposals for a Statutory Company and an examination of the changes in legislation which should be made simultaneously.

On Monday the 1st March, 1943, Mr. Reynolds' Memorandum and the Minister's Minute were passed by the Secretary to the Assistant Secretary and by him to Mr. John O'Brien, Principal Officer, Transport Branch of the Department.

Mr. O'Brien in a Memorandum dated the 6th May, 1943, pointed out that the capital of the two Companies amounted to £14,251,451, while the proposed new company's capital was only £10,000,000, and that if the Dublin United Transport Company's Ordinary Stock was to be taken at par, the 6% preference stock should receive more liberal treatment e.g., two new shares for each one preference, which would absorb about £2,000,000, even assuming that that Company's £300,000 Debentures were paid off. This would leave but £8,000,000 of the new company's capital available to acquire the £12,691,451 stocks of the Great Southern Railways Company and, unless terms could be arranged by some negotiator, compulsory terms of exchange would have to be incorporated in the legislation, or left for settlement by some judicial body.

This Memorandum was passed to Mr. Flynn, the Assistant Secretary, on the 6th May and by him passed to Mr. Ferguson, the Secretary, on the 1st July, 1943. The Secretary added a further Memorandum dated 14th July, 1943, in which he discussed the possibility of offering existing stockholders bonds in the new company, or, as an alternative, cash, which would avoid any suggestion of confiscation and recalled the reduction of Capital in 1933 and the reaction to it. He came to the conclusion that compulsory conversion was inevitable.

The Secretary also pointed out the difficulty of deciding what would be fair and proper conversion terms and suggested that Mr. Reynolds be asked to state his ideas of what he would consider a fair and proper



basis for the scheme. He annexed a number of calculations of the cost of conversion based on market quotations designed to bring the required new capital under or within range of the figure of £10,000,000 mentioned in the Minister's minute.

He drew attention to the distinction between the fixed interest bonds to be given to holders of existing stocks guaranteed only as to interest and for a limited period, and the stock to be issued for new capital guaranteed as to capital and interest and without limit of time.

Finally he dealt at length with matters referred to in the Report of the Transport Tribunal and certain subjects of legislation.

The file, with the above-mentioned additions, was returned to the Minister on the 14th July, 1943.

In August the file was handed over by the Minister to the Assistant Secretary with instructions to get in touch with Mr. Reynolds. A meeting could not be arranged till 2nd September when Mr. Flynn found that Mr. Reynolds now contemplated a fixed capital of £5,000,000 in common stock with a Government Guarantee of dividend at not less than 2½% for 7 years, this Stock to be utilised to acquire the Preference and Ordinary Stock of the Company at par and the balance used to acquire the Dublin United Transport Company.

In addition, Mr. Reynolds wanted authority to issue fixed 3% redeemable Bonds bringing his total capital up to £25,000,000. The Bonds to be redeemable at will and to carry a Government Guarantee until redemption. He anticipated no difficulty in getting the holders of Debenture and Guaranteed Stocks of the Company to accept exchange at par. This would absorb something over £10,000,000 and he could issue as many more of the Bonds as were necessary to provide funds for reconstruction and re-organisation. He hoped to redeem them out of revenue as he had been able to do in the case of the Dublin United Transport Company owing to the economies effected by re-organisation.

Mr. Flynn's Memorandum of the meeting was dated the 6th September, 1943, and the following day the Secretary wrote a minute thereon discussing the proposals and adding that with the economies effected by reduction of interest, etc., by approximately £200,000, and with other economies which Mr. Reynolds had in mind, the company ought to be able to keep down the interest and the Government guarantee might not be called on at all. He suggested a meeting for further discussion between the Minister, the Secretary and Assistant Secretary, which was held on 23rd September, 1943.

Mr. Flynn again met Mr. Reynolds on the 30th September, 1943, when there was some discussion as to the amount of the proposed capital, which Mr. Flynn thought too high. Finally, the figure of £20,000,000 was suggested and provisionally accepted by Mr. Reynolds who, it was agreed, should go away and draft a scheme for consideration. This was the first time that the figure of £20,000,000 was suggested as the Capital of the new company.

On the 7th October, 1943, Mr. Reynolds wrote to the Secretary a

new company with a capital of £20,000,000, divided into £16,000,000 3% Government Guaranteed Debenture Stock, and £4,000,000 Common Stock, which would be exchanged with the existing Stockholders as follows:—

Great Southern Railways.	New Company
Debenture Stock — 3%	Guaranteed Stock £1 for £1.
	holding 3%
Guaranteed Preference —	Guaranteed Stock £1 for £1.
	holding Common
	Stock. £1 for £1.
4% Preference and Ordinary Stocks.	Common Stock £1 for £1.

He also enclosed a draft of a circular to Stockholders setting out the proposals.

The Minister approved the scheme for submission to the Government, subject to the assent of the Department of Finance.

On Saturday, 9th October, a meeting was held between Mr. McElligott and Mr. Hanna, the Secretary and Assistant Secretary of the Department of Finance, and the Secretary and the Assistant Secretary of the Department of Industry and Commerce when the proposals contained in the draft circular were fully discussed, and on the 12th of October, Mr. McElligott communicated that his Department offered no objection.

Meantime the Minister authorised the preparation of a Memorandum for the Government to consider whether there were any objections to the issue of the circular by the Company to its stockholders. The matter was considered by the Government at its meetings on the 15th and 19th of October and, on the latter date, Mr. Flynn was informed that the Government saw no objection to the issue of the circular and he, at once, told Mr. Reynolds.

A special meeting of the directors of the Company was summoned for Thursday, the 21st October, when the directors heard of the proposals for the first time. They readily approved of them and were all anxious that the circular should be issued as soon as possible.

The circular was then printed by the Company's own staff, and, together with a form of assent, was posted to all stockholders on the evening of Sunday the 24th October. That same evening Mr. Reynolds gave full particulars to the press which were made public in the newspapers of Monday, 25th October.

3. Miscellaneous matters arising on the evidence and our Conclusions Thereon.

(a) In the course of the evidence before us dealing with the confidential matters mentioned in Section II of this part of our report, we had proof of the steps taken to preserve the secrecy of the proposals

in the Department and by the Chairman of the Company. We are of opinion that every reasonable precaution was taken in this connection and that no unauthorised person had access to the secret documents.

(b) In the earlier stages of the Inquiry, returns, verified upon oath, were furnished to us by every Broker in the State giving particulars of all purchasers who during the period under review bought in the aggregate more than £500 in nominal value of the Company's stocks. We think it right to state that, with the exception mentioned in paragraph (d) below which we are satisfied was trivial and without significance, our investigations failed to disclose any connection between any such purchaser and any Minister of State or the Chairman of the Company.

(c) We intend to deal later specifically with purchases by certain officials of the Department of Industry and Commerce and by a Director and by an official of the Company. Apart from these specific instances, our investigations have failed to show any purchase to which we can attach any significance by any official of the Departments of Industry and Commerce or Finance or by an official of the Company. Many of these officials gave evidence and denied having ever purchased any stock of the Company or being aware of any such purchase on their behalf or by or on behalf of any of their families or relatives. These denials we accept without reservation.

(d) The Minister for Local Government and Public Health volunteered to us the information that his sister who resides in Belfast had invested £250 in a purchase of the Company's stock on the 19th October. Although we attached no significance to this purchase, he desired to be examined with regard to it. He satisfied us beyond question that he first learned of this purchase some considerable time after the event and that he was in no way responsible for the transaction.

(e) The Minister for Industry and Commerce gave evidence as to the inner history of the capital re-organisation proposals. Although the records before us did not disclose any purchase by him, nor, so far as we could see, by any relative of his, we thought it right to require him to deal with the matter in the witness box. We questioned him as to whether he or any of his relatives had purchased any of the Company's stock directly or indirectly and he assured us that nothing of the kind had taken place. We also questioned him as to the possibility of any improper use or disclosure by him of any information. He denied any such possibility. We accept without reservation his assurances and denials.

(f) The Chairman of the Company was similarly questioned and made similar denials which we likewise accept without reservation. We deal later with his evidence specifically.

(g) The Secretary, the Assistant Secretary and the other officials of the Department of Industry and Commerce who appeared before us were also questioned as to the possibility of disclosure by them of the details of the re-organisation proposals. They all assured us that they had not discussed the matter with any unauthorised persons and we accept unreservedly such assurances.

4. Summary of the evidence as to rumours concerning the affairs of the Company current during the period under review.

It was admitted on all sides that, during the whole of the summer of 1943 and down to the date of publication, rumours and "tips" alleged to emanate from persons in possession of inside information concerning the details of the plans for the re-organisation of the Company were exceedingly prevalent. We endeavoured in each case to trace the rumours to their source and to ascertain whether there was any truth in the allegations. We failed to find any single instance in which any of such stories was substantiated. Furthermore, in all the rumours referred to in the evidence there was, with one exception, no mention of any term or detail of the proposals which were from time to time the subject of consideration prior to the date of publication. These rumours, in so far as they were even vaguely accurate, contained no reference to any matter which had not already been spoken of in public.

The exception mentioned above arises out of the evidence of Mr. Dominic Morrogh, the President of the Cork Stock Exchange for 1944 and a member of the firm of W. & R. Morrogh of Cork. He attended on the occasion of our final sitting on the 23rd June and was questioned by us as to the rumours prevalent in Cork. He stated that the only tangible rumour which he could recollect was that about September, 1943, during a routine conversation on the telephone with Messrs. Dillon & Son, who were his Dublin Agents, Mr. Owen Murphy of that firm informed him that he had heard a story to the effect that a new company was being formed with a capital of £20,000,000 to take over the Great Southern Railways. Mr. Morrogh was rather vague in his recollection and assured us that he placed no faith in the story which, as he had been told by Mr. Murphy, was only rumour. We were unable to secure the attendance of Mr. Murphy to question him on the matter as we learned that he was seriously ill in London and it was not anticipated that he would be able to return to this country for some time.

It does not appear that Mr. Morrogh or Mr. Murphy or their respective firms placed any reliance on the story. Neither of the firms did a very extensive business in the Company's stocks and they were not amongst the firms whose representatives were examined by us on this account. Messrs. Dillon and Messrs. Morrogh were respectively the eleventh and sixteenth in the list of all firms of stockbrokers arranged in descending order of the amount of stock purchased between 1st January, 1943, and the date of publication. Messrs. Dillon's purchases during this period amounted to £28,970 (nominal) and Messrs. Morrogh's to £19,950; the average for the first sixteen firms appearing on the list being £56,047.

Although the figure of £20,000,000 which was mentioned in the rumour, was the figure ultimately arrived at for the capital of the New Company, we do not attach any importance to it and are satisfied that it must have been based on mere surmise. Mr. Morrogh said he heard it about September but it was proved to us, as we have

of Stock and added that he had asked Mr. MacMahon if there was any chance of a dividend being paid, and that Mr. MacMahon had replied that he could not tell at all because the Board had never discussed it. He also stated that he asked Mr. MacMahon whether the traffic were going up and that he had replied that it was going up every week.

This last-mentioned matter was never put to Mr. MacMahon as it was not considered necessary to recall him merely for that purpose, since this fact was already widely known and there would have been no impropriety in such a reply.

From these somewhat divergent stories it is difficult to say what precisely transpired between Mr. Frame and Mr. MacMahon but, judging from the fact that an immediate order to purchase was given, it would appear that Mr. Frame inferred from Mr. MacMahon's reply to his questions that there was a chance of a dividend. We are quite satisfied that Mr. MacMahon did not, and could not, give any definite information as to the prospect of a dividend, although he may have stated that the traffic receipts were very good—a fact which was fairly generally known.

Although no stock was purchased as a result of this incident, and although it is quite irrelevant to our Inquiry since it took place after the date of publication, we felt that it should be specifically mentioned by us having regard to the amount of publicity that it received during the course of our Inquiry and afterwards.

(c) MR. W. J. TUNNEY.

Mr. W. J. Tunney is the Senior Member of the firm of Messrs. P. W. Tunney and Co., Stockbrokers. In the earlier stages of our Inquiry we were inclined to suspect that he or his firm had some special knowledge which was not generally available. This suspicion was based on the following grounds:—

1. The firm handled approximately 20% of the total purchases of the Company's Stocks made between 1st January and the date of publication, doing almost three times as much business in the stocks as its nearest competitor;
2. Both the firm and its members on their own behalf dealt to a substantial extent in the stocks of the Company throughout the whole year, although at no time was the holding of any member or of the firm very large.
3. They appear to have been the only firm of stockbrokers who took the responsibility of consistently recommending the purchase of the Company's Senior stocks before the issue of the Prospectus.
4. Some of the larger purchasers, including Mr. Cashin and Mr. Maher, dealt through the firm.
5. The Tunney family was connected with Milltown Golf Club, two of them being members, and quite a number of substantial purchases were effected by members of that Club.

6. Mr. John O'Brien, then a Principal Officer of the Transport Branch of the Department of Industry and Commerce, effected his purchases through the firm and stated in evidence that he was a friend of Mr. Tierney, the Manager of the firm.

7. The firm's correspondence seemed to indicate the existence of special knowledge.

We accordingly made a thorough investigation of their dealings. Mr. W. J. Tunney was examined before us at great length attending in all on five occasions. We also called Mr. Fergus Tunney, Mr. John William Tunney and Mr. Tierney. The entire correspondence of the firm for the year 1943 was placed at our disposal and was carefully inspected. Any extracts required from the books of the firm and accounts were willingly produced.

Mr. W. J. Tunney and the other witnesses from the firm all consistently denied having any advance knowledge of the proposals for the re-organisation of the Company.

We are satisfied that the firm has always done a substantial business in all classes of Railway Stocks. Mr. W. J. Tunney, as appeared from the firm's correspondence of earlier years, had for a long time been a regular supporter of the Company's issues. Even though the event had sometimes proved him wrong on previous occasions, he remained optimistic. He was continually advising clients to buy Debenture Stock and recommending Guaranteed Preference as a good speculation. In fact he bought considerably himself. In addition, following the Chairman's speech of 3rd March, 1943, he instructed his Auditor to prepare a statement showing the effect on the value of the Company's stocks of a 10% increase in Railway Rates and Fares and a reduction of 25% in Debentures, 50% in Guaranteed Preference, 75% in Preference and 85% in Ordinary Stock. With the aid of this document, Mr. W. J. Tunney estimated the value of the Stock at a higher figure than the then current price and came to the conclusion that the increased profits resulting from an increase in rates would be more than sufficient for the payment of dividends. He was most enthusiastic about this document and sent copies of it to a number of clients.

The fact of Mr. Cashin and Mr. Maher dealing through the firm seems to have been largely due to coincidence. Mr. Maher is undoubtedly a friend of Mr. W. J. Tunney who frequently discussed with him the merits and demerits of various securities from the investment point of view. Messrs. Tunney are, however, not responsible for their purchases of the Company's stocks since it is customary for these gentlemen to make up their own minds without advice and merely to give an order to purchase—a fact to which all three deposed and which was corroborated by independent evidence.

The presence of a number of members of Milltown Golf Club in the lists of purchasers of the Company's stocks during the year was not solely attributable to the Tunney family, although the fact of the Tunneys' being associated with the Club may have induced some members to invest through the firm. Mr. Cashin in his evidence—

as appears below—admitted that he was responsible for a number of such purchases.

Although Mr. O'Brien had been dealing through Messrs. Tunney for several years, he deposed that he was but slightly acquainted with one member of the Tunny family and this was corroborated by each of them. Mr. Tierney was, however, a friend of Mr. O'Brien and it was through him that Mr. O'Brien originally came to patronise the firm.

Both Mr. Tierney and Mr. O'Brien swore that they never discussed the possibility of, much less the terms of, railway re-organisation. This is supported by a letter from the firm to a client written by Mr. Tierney and dated 21st June, 1943. This letter was to the following effect "All parties in the Dáil agree that Railways are an essential service . . . large sums will have to be expended . . . The prevailing idea is that a loan carrying a Government guarantee as to the Principal and Interest will be issued . . . while there may be some capital re-organisation, with possibly an exchange into a state guaranteed stock, we believe that although this may mean a smaller holding the market value will be at a much higher level." It was added that it might be assumed that present stockholders would be fairly treated since the success in obtaining additional capital would largely depend on it and the client was advised to postpone a sale of the Company's stocks until "after the Government's intentions were known." This letter was in a style entirely different from the rest of the correspondence, due to its being written by Mr. Tierney. If Mr. O'Brien who had been working on his Memorandum dealing with the re-organisation from 1st March to 6th May, had given any information to Mr. Tierney, it seems to us unlikely that the letter would have been written in that form. Most of the reasoning contained in the letter could have been obtained from the report of the Transport Tribunal or from Mr. Reynolds' speech.

The firm's correspondence throughout the year was the chief cause of our suspicions. Mr. W. J. Tunney stated that he was mainly the author and accepted complete responsibility. It was generally very confident in tone when discussing the prospects of the Company. It contained many statements from which it could be inferred that the writer had some special knowledge, e.g., "I have excellent reports of the Company's progress," "I am told that the Guaranteed may be paid off at a minimum of £50 plus £12 arrears of dividend," "I may have more definite news for you in a few weeks," and "on information I have received I consider Great Southern Railway Debenture a very good purchase at the moment." Mr. Tunney was taken through the entire correspondence and was pressed very strongly on these points, but he stoutly maintained that he had no special information and was relying on the general rumours known to every member of the Stock Exchange, and upon the fact which he had learned from Mr. Maher early in August that Traffic receipts had increased. He attributed all these statements to an unfortunate habit of loose phraseology.

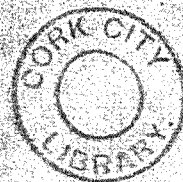
A careful examination of all the firm's correspondence for the year

under review, and reference to that of previous years, supports this explanation. The letters which contain some remarkable statements are full of inaccuracies and are not always consistent.

1. In February he wrote "I hear there are prospects of an increase in fares **being granted**." There was in fact no application for an increase until April although such application had been foreshadowed in the Chairman's speech of 3rd March, 1943.
2. On the 27th September he wrote "There is a very strong rumour regarding a scheme for the purchase of the railway . . ." On the 1st October "It is rumoured that the Government are thinking of buying out the Railway." On the 12th October "it seems almost certain that the Government intend to bring out a scheme for the purchase of the Railway," and on the 19th October, "there are all sorts of rumours but I think it seems likely that the Government has some plan to buy out the Railway." There is no evidence that the Government at any time contemplated nationalisation of the Railways.
3. On August 24th he wrote "I would advise you to give your instructions **at once** as I am under the impression that some interesting developments are due to take place regarding the Company." On September 27th: "There is a very strong rumour regarding a scheme for the purchase of the Railway which may materialise . . . **next month**." On the 1st October he repeated the rumour and added "I may have more definite information for you **in a few weeks**." Three days later "we believe that some interesting news may be published **next month**." On the 11th October: "I am quite satisfied that an announcement will be made in a **few weeks** time." On the 19th October: "A scheme is in preparation and particulars of it may be published **at any moment**" and three days later (October 22nd) "Unless I am mistaken some interesting announcement may be made **within the next few weeks**."
4. On November 2nd he wrote "We got an order from a person connected with the proposed reconstruction and he seems **very confident** a dividend will be paid on the preference much sooner than people think" but on November 5th "there is just **a million to one chance** that a dividend might be paid on the Preference as a last gesture of the Railway Company."

The reference to the person connected with the proposed reconstruction is to Mr. Dooly, the Manager of the Company's Road Freight Department, who, as will appear later, did not know and had no means of knowing whether a dividend would be paid or not.

Having regard to all the circumstances we are of opinion that to accord this correspondence a literal interpretation would be a mistake.



(d) MR. CHARLES F. CASHIN.

Mr. C. F. Cashin who purchased in the aggregate some £56,000 (nominal) of the Company's stocks between 1st January, 1943, and the date of publication, told us that he had been dealing in various stocks and shares including the Company's stocks, for a considerable time. His reasons, as given in evidence, for purchasing Stocks of the Company may be summarised as follows:—

1. He had great faith in Mr. Reynolds because of his success in the Dublin United Transport Company and had, in fact, bought some of the Company's Stock in 1942 solely on the strength of his appointment as Chairman of the Company.
2. He was influenced by the suggestion of a Government guarantee contained in Mr. Reynolds' speech at the General Meeting on 3rd March, 1943, and came to the conclusion that the stocks were worth buying at the price then current.
3. He paid great attention to the replies given by the Minister in Dáil Éireann on 24th March, 1943, to the questions by Mr. Keyes and Mr. Davin. These replies, which we have quoted earlier, he summarised as follows:—
 - (a) There were proposals under consideration for re-organisation of capital;
 - (b) These proposals were following on conversations with Mr. Reynolds and would require lengthy examination and development; and
 - (c) The Company intended asking for an increase of rates and fares by Emergency Powers Order.
4. The Minister's speech at Inchicore on the 16th June setting out the Government's intentions with regard to the Railways confirmed the opinion which he had formed.
5. He knew from his own experience in business with which he was connected that traffic had greatly increased.
6. In July he concluded that the Government intended to control road transport in the Western Counties and that control would be further extended. He knew from his own experience what monopoly meant; if the Company could get control, it could do anything.

Influenced by these considerations he bought a certain amount of stocks in the earlier part of the year. The granting of the transport monopoly to the Company carried a very great weight with him and in August he finally decided to invest all his available funds in the stocks. He bought fairly heavily in that month. He held his hand in September owing to meetings of protest of lorrymen and others but resumed buying again in October when things seemed quieter.

Mr. Cashin assured us that he did not receive any secret information concerning the re-organisation from any source whatever. He further stated that he never sought or gave advice as to purchases of any class of Stock Exchange securities, but, if asked by anyone whom he thought could afford to take the risk, he would simply say whether he himself was buying. He told some members of the Milltown Golf

Club and others, whose names he indicated to us, that he was buying the Company's stocks and, by reason of his example, a number of these persons did in fact purchase.

He further told us that he was a friend of Mr. John Maher, the then Secretary to the Controller and Auditor General, and that each of them knew that the other was buying. His Brokers were Messrs. P. W. Tunney & Co. and Messrs. O'Donnell and Fitzgerald, but he did not consult them about the purchases, he merely gave the order to purchase.

We have also had inspection of Mr. Cashin's Bank account and all the items appearing thereon have been satisfactorily explained to us.

(e) MR. JOHN MAHER.

Mr. John Maher impressed us as a person who had made a very careful study of Stock Exchange trends and tendencies over a long number of years. He might be regarded as an expert on questions dealing with stocks and shares and indeed his friend and Stockbroker Mr. W. J. Tunney, regarded him as such. He had been purchasing the Company's stocks since 1937 and he bought some £21,000 (nominal value) between 1st January, 1943, and the date of publication; of this amount some £2,000 (nominal) had been acquired in January before any steps had been taken in the re-organisation scheme.

He gave us two reasons for making his purchases:—

1. He regarded Mr. Reynolds' speech as "the straightest tip he ever got in a newspaper" because the Chairman stated:
 - (a) That the Capital was going to be re-organised;
 - (b) That new Capital must be guaranteed; and
 - (c) That whatever was ultimately determined to be the value of the Stockholders' interest should rank equally with and carry whatever guarantees were given to those subscribing new capital.

From his experience in financial matters Mr. Maher assumed that any new loan would be in the neighbourhood of 3% and even if the nominal value of the Debentures should be reduced again by 15% they should stand at about 82-83.

2. He stated that in the Railway statistics published in the July issue of the Quarterly Bulletin of the Central Bank he saw that the combined receipts of the railways operating in the State, including the Great Northern Railway, for the six months ending 30th June, 1943, showed a very marked increase when compared with the corresponding figure in 1942. He also stated that early in August, 1943, he saw a newspaper report of proceedings brought before the Railway Tribunal by the Great Northern Railway (Ireland) for an increase in rates, when evidence was given that the receipts of the Great Northern Railway (Ireland) for the first six months of 1943 showed an improvement of only £608 when compared with the same period in the previous year. By deducting this amount from the bulked figures in the Quarterly Bulletin, he satisfied himself that

it was obvious that there had been a very substantial increase in the Company's traffic receipts even before the 1st July, 1943, when the exceptional rates were abolished.

Although he had the necessary funds available, and although he took such an optimistic view of Mr. Reynolds' speech, Mr. Maher deferred purchasing until towards the end of August. He explained that this delay was due to a contingent liability which eventually disappeared following the determination of a case in the High Court.

Mr. Maher swore that he relied solely on his own judgment and that he had no access to any secret information. He told us that he obtained no information whatever about Railway re-organisation in the course of his official duties. He knew that his friend Mr. Cashin was also buying the Company's stocks but he had no idea of the amount of his purchases. He also stated that he had told Mr. Tunney about the increase in the Company's traffic receipts and Mr. Tunney, judging from his evidence, placed much reliance on this fact.

(f) MR. MICHAEL F. O'HANLON.

Mr. Michael F. O'Hanlon, whose purchases amounted to some £67,000 (nominal value) of the Company's stocks between 1st January, 1943, and the date of publication, largely confined himself to purchases of the 4% Preference stock. His purchases, all of which he retained at the time of giving evidence before us, were spread out over the whole of this period. He told us in evidence that he had been regularly purchasing the Company's stocks since 1930 and that he was still doing so. This fact was fully corroborated by his Stockbrokers and by the records with which we were furnished.

In making his purchases in 1943 he said that he was influenced by two major factors and his deductions therefrom.

These two factors were:—

1. The Chairman's speech of the 3rd March, 1943; and
2. The figures in the Company's Accounts and Balance Sheet for the year ending 31st December, 1942.

1. With regard to the Chairman's speech he made the following points:

- (a) Reconstruction was foreshadowed. He considered that any such reconstruction and reduction of capital would not be more drastic than in 1933 when £100 Preference Stock was cut to £35 and £100 Guaranteed Preference Stock to £50. On this basis he reckoned that these stocks at the then current prices of £12 and £27 or £28 were good buying;
- (b) Mr. Reynolds said that Investors must be given a guarantee that their capital would not be lost and that the payment of interest would be certain;
- (c) That proposals for the stabilisation of the capital of the Company were to be then formulated;
- (d) That there was a post-war plan for a co-ordinated transport system of which the country might be proud; and

(e) That an increase in rates was being sought, which, he calculated, would bring in an additional £285,000 per annum.

2. From the figures in the Company's Accounts and Balance Sheet he deduced that the financial position of the Company was not as serious as had been portrayed by Mr. Reynolds. He relied in particular on the amounts appearing in the accounts for maintenance and renewals. It seemed to us that he misinterpreted the figures to which he referred, and our view was confirmed by the Company's Chief Accountant. When recalled, the Accountant's opinion was put to him but, notwithstanding this, Mr. O'Hanlon refused to agree that he was under any misapprehension and insisted that subsequent events had proved him to be correct.

From our examination of Mr. O'Hanlon we are satisfied that he had given careful consideration to the Company's financial position over a number of years and had studied the Balance Sheet and Accounts for 1942 in very great detail. He assured us that he did not receive any secret information concerning the re-organisation scheme from any source and that no such source was available to him. He admitted to having advised certain persons to purchase the Company's stocks during the year and some of these persons did in fact buy.

We examined Mr. O'Hanlon's Bank account for the years 1942 and 1943 and all items both on the credit and debit side, which appeared prima facie to have any significance, have been fully explained to our satisfaction. We were also furnished with particulars of his other investments which corroborated his evidence in every material respect.

(g) MR. BLAYNEY HAMILTON.

Although the major portion of Mr. Hamilton's investments in the Company's stocks was made subsequent to the date of publication, he bought £9,800 Debenture stock between the 17th October and that date. As he was known to be a personal friend of Mr. Reynolds, and as he was also connected through his business as Insurance Broker, with the Dublin United Transport Company and with the Company, we deemed it advisable to call upon him to attend as a witness.

Mr. Hamilton deposed in evidence that he had obtained no information whatever concerning the re-organisation proposals from Mr. Reynolds and had never discussed with him the value or prospects of the Company's stocks. He stated that he had no special knowledge beyond what appeared in the newspapers and such as he acquired in the ordinary way in the course of his business.

His reasons for purchasing were:—

1. He had great faith in Mr. Reynolds whom he believed would make a success of the railways. In support of this he proved to our satisfaction that he had bought shares in the Dublin United Transport Company very shortly after Mr. Reynolds had joined that Company, relying solely on his knowledge of Mr. Reynolds' organising

ability which at that time was not so widely appreciated as it has since become.

2. He knew from his business associates and clients that the Company must be doing well; trains were running to time and were crowded; rates were up and goods traffic was heavy; and
3. Dr. Oliver Chance told him on a date prior to 13th October that he had heard that the Government would take over the Debentures at 85. The bulk of his earlier purchases were made on the strength of this "tip" which proved to be entirely wrong though the result had been quite satisfactory. Dr. Chance subsequently appeared before us and admitted that he had given Mr. Hamilton this "tip" which he himself had heard from his stockbroker—Mr. G. N. Blake Kelly, who confirmed this in his evidence.

We also had inspection of Mr. Hamilton's Bank Accounts and were furnished with lists of the Securities which he held from time to time. All items appearing in the accounts were properly vouched and, in our opinion, clearly showed that Mr. Hamilton had purchased all the stocks on his own behalf and not as nominee for any other person. Moreover, the lists of Securities indicated that Mr. Hamilton had for a number of years shown a distinct preference for transport stocks of one type or another.

We are satisfied that Mr. Hamilton did not buy any of the Company's stock on behalf of Mr. Reynolds or of anyone else.

(h) MESSRS. DANIEL J. O'DONOHUE and PATRICK MURPHY.

Mr. O'Donohue is the Managing Director of Messrs. Bolands Ltd., the well-known Dublin Milling and Bakery firm, and Mr. Murphy is one of his co-directors. Mr. Murphy also carried on a substantial business as a wholesale provision merchant on his own behalf. They are friends of long standing and it was proved to us that, on a number of occasions in the past, they had jointly invested in various Stock Exchange securities. On 30th June, 1943, Mr. Murphy gave an order to their Stockbrokers to purchase, on their joint account, £10,000 Preference Stock, £10,000 Guaranteed Preference Stock and £10,000 Debenture Stock of the Company. Owing to the limited amounts of the stocks available on the market, this order took a whole month to fulfil and was not finally completed until the end of July.

It is noteworthy that this was the first substantial order for the purchase of the Company's stocks during the period under review and it had quite an appreciable effect on the market. The Preference and Guaranteed Preference Stock bought by Messrs. O'Donohue and Murphy amounted to one half of the total volume of business done in those stocks respectively in the month of July, while their purchase of Debenture almost amounted to one third of the total during the same period. As a result, there was a fairly substantial rise in the price of these three Stocks, and it is significant that the

price of Ordinary Stock remained constant. It seems to us a reasonable assumption that the purchase by Messrs. O'Donohue and Murphy was a primary cause of the revival of interest in the Company's issues which, as we were told, manifested itself for the first time towards the end of July.

It was on Mr. Murphy's initiative that the joint venture was undertaken. He persuaded Mr. O'Donohue to join him in the purchase. His reason for purchasing, which he told his Stockbroker at the time and which his Stockbroker corroborated, was that both he, in connection with his own business, and Messrs. Boland Ltd., received notice some time after 27th May of an intention on the part of the Company to withdraw the privileged freight rates hitherto enjoyed by them. He calculated that this would cost Messrs. Bolands Ltd. an additional £4,500 per annum and himself an extra £700 a year. He further calculated that if only 35 firms had to pay as much as Bolands, the Company would have profits sufficient to pay a dividend on both the Preference stocks. He stated that this was his only reason for considering the stocks a good investment and that he had no inside information.

Mr. O'Donohue was also examined. He assured us that he was not enamoured with the idea of purchasing any of the Company's stocks and would not have joined Mr. Murphy were it not for the fact that, although he was not personally acquainted with Mr. Reynolds, he knew him to be a good man by reason of his success in the Dublin United Transport Company. He was also impressed by the calculations made by Mr. Murphy as to the additional sums which would have to be paid to the Company by Messrs. Bolands Ltd. and the other heavy industries. It was he who persuaded Mr. Murphy to sell when the prices rose as he wanted to take his profit. The order for sale was given on 7th October, and, except for some Debentures, the entire holding was sold before the issue of the circular. They accordingly derived no benefit from the rise in price which took place immediately after the date of publication.

(i) MR. JAMES P. GOODBODY.

Mr. Goodbody is a Director of the Company and was present in Dublin at the meeting on Thursday, 21st October, 1943, when the re-organisation proposals were for the first time made known to the Directors of the Company. He returned to Limerick on the next day, Friday, and at about 4.30 or 5 p.m., after the Stock Exchange had closed, he telephoned to his Stockbrokers, Messrs. Goodbody & Webb of No. 50 Dame Street, Dublin, instructing them to purchase £3,000 Guaranteed Preference Stock. His Brokers succeeded in purchasing £500 of this stock "after hours" on the same evening and the balance was purchased on 25th and 26th October.

In his evidence Mr. Goodbody stated:—

1. That he anticipated that the Circular would be published on Monday, 25th October—as, in fact, it was—since the

2. That he thought no purchase could be made until the Stock Exchange re-opened on Monday morning.
3. That, if the details of the scheme were not published in the Monday morning's papers, which he usually received at 9 a.m., he intended to ring up his Brokers and tell them to hold over the purchase.
4. That whether it was proper or improper he would not make a purchase before the publication of the circular as he had in his possession information not available to the general public.
5. That he was very annoyed when he learned that the purchase of £500 stock had been made before the date of publication, but that as the amount of stock was so small he hardly saw his way to throw it back on the Brokers' hands.

In arriving at our conclusions which we set out below, we are influenced by the following circumstances:—

1. At the time when the order was given there was no certainty that the circular would be posted to the stockholders on Sunday evening, or that the news would appear in the daily press on the morning of Monday, 25th October.
2. If the publication of the proposals had been delayed, there was no absolute certainty that the order could have been cancelled in time.
3. As the stock had risen several points in price after the issue of the circular, we fail to appreciate Mr. Goodbody's difficulty in leaving the £500 Stock purchased on the Friday on his Brokers' hands.

Although Mr. Goodbody's action was in no way unlawful, we are of opinion that the mere giving of the order to purchase the stock before the issue of the circular was an improper use of information concerning the proposals for the re-organisation of the capital of the Company within the meaning of our terms of reference. We are further of opinion that the purchase of the £500 stock was also an improper use of such information.

We are satisfied that this incident led to no other dealings.

(j) MR. JOHN O'BRIEN.

Mr. John O'Brien was a Principal Officer in the Transport Branch of the Department of Industry and Commerce. He had been Secretary to the Tribunal of Inquiry on Public Transport, and, during the period under review, he was also very closely connected with the scheme for the re-organisation of the Company's capital. In the course of his duties in the Department he told us that he had made a profound study of Railway Transport in Ireland and had from time to time since 1933 invested in the issues of the Great Northern Railway (Ireland) and of the Company.

On 1st January, 1943, he held some of the Company's stock which he had purchased in 1941. He purchased £300 Guaranteed Preference on 13th April, 1943, and made a further purchase of £400 Guaranteed

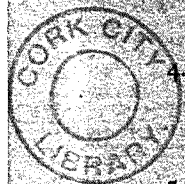
with his former holdings, through Messrs. P. W. Tunney & Co., at the beginning of September. This sale was effected just before Mr. O'Brien went on holidays and on 13th September, when acknowledging the transfers, Messrs. Tunney suggested re-investment in the same stock which had recently fallen sharply in price, and added that they were confident of recovery.

Mr. O'Brien gave no instructions as to re-investment until he returned to Dublin at the end of the month, when he gave an order to purchase £1,000 Debenture stock. In his evidence he stated that he thought he gave this order on Monday, 4th October, the day before he was due to return to his office, and subsequent investigation proved that his recollection was correct. He had, however, called at his office when returning from the Bank either on the Monday or else on the previous Saturday, but he assured us that on that occasion he had no conversation about the re-organisation scheme.

At the time when Mr. O'Brien went on holidays, the plans under consideration in the Department envisaged a new company with a capital of £10,000,000. It was only on October 5th or 6th that he heard from Mr. Flynn of the proposed change in the capital of the new company, and even then the matter was still in a state of uncertainty as Mr. Reynolds' final proposals did not reach the Department until the following day. His last purchase in the period under review was made on October 11th when he bought £400 Guaranteed Preference through his bank.

Mr. O'Brien assured us that in making his purchases of the Company's stocks during the period under review, he was relying solely on his own judgment and that he was not in any way influenced by his knowledge of the various re-organisation proposals which were from time to time under consideration in the Department. These assertions are, to a limited extent, confirmed by the fact that he sold his original holdings in the beginning of September before the proposals had been crystallised and at that time apparently asked his Stockbrokers for advice as to re-investment. While we accept Mr. O'Brien's evidence as a sincere statement of his belief, we consider it to be virtually impossible for any person to dissociate himself so completely from the knowledge in his possession that his judgment would be wholly unaffected by it. We must therefore regard Mr. O'Brien's purchases as an improper use of information concerning the proposals for the re-organisation of the Company's capital.

Mr. O'Brien stated that he did not disclose any information concerning the proposals to his Stockbrokers, Messrs. P. W. Tunney & Co., or to Mr. Tierney, the Manager of that firm, and that he had not mentioned his own dealings in the stocks to anyone. He further assured us that he did not give any information whatsoever to any person regarding the re-organisation save to those officials of the Department who were officially connected with the scheme, and that he regarded the matter as one of the utmost secrecy. We accept Mr. O'Brien's evidence on these points and are satisfied from the evidence before us that Mr. O'Brien's purchases had no effect on the



(k) MR. TIMOTHY J. O'DRISCOLL.

Before dealing with the evidence concerning Mr. O'Driscoll's transactions and our conclusions thereon it is necessary to refer to the administrative sub-divisions of the Transport and Marine Branch of the Department of Industry and Commerce. The Branch, as a whole is under the control of Mr. T. J. Flynn, the Assistant Secretary, but otherwise it has two separate and distinct sub-divisions which we understand are mutually exclusive and occupy different offices and have their own special staffs. These sub-divisions are the General Transport Division and the Marine and Aviation Division. During the period under review, Mr. John O'Brien was the principal officer in charge of the former, which was dealing with the Railway re-organisation scheme, while Mr. O'Driscoll was the principal officer in charge of the latter, which dealt solely with Marine and Aviation matters—as its title would imply—and officially had nothing whatever to do with transport on land. It is accordingly clear, and we accept the evidence to that effect that Mr. O'Driscoll had no connection with the Railway re-organisation scheme and we are satisfied that he had no access to the various minutes and memoranda relating to the scheme in the course of his official duties.

Mr. O'Driscoll purchased £600 Guaranteed Preference Stock through his bank on 27th May, 1943. He sold this stock on 3rd September. He again purchased on 13th October, on this occasion his order being for £800 Guaranteed Preference and £800 Debenture which he re-sold on 15th November, 1943. Before 1943 he had held some Great Northern Railway (Ireland) stock but he sold it in 1942.

In his evidence Mr. O'Driscoll put forward the following reasons which, he said, operated in his mind before affecting his purchases:—

1. He carefully studied the financial news in the daily press in so far as it dealt with railway matters and noticed that there was considerable publicity about the Company.
2. The Chairman's speech and the Minister's replies in the Dáil influenced him very considerably and made him think that the stock was worth buying at its then very low price.
3. He had read the Minister's speeches about re-organisation.
4. He had no definite knowledge that the General Transport Division of the Department was working at the scheme but he surmised that this was so by reason of the fact that, on occasion, when he wanted to discuss matters with Mr. Flynn he was informed that Mr. Flynn was in consultation with Mr. Reynolds.

Mr. O'Driscoll informed us that the first two circumstances induced him to make his original purchase in May and that when the price of the stock rose in August he decided to take his profit and he thereon gave his order to sell on 2nd September. When he saw the recovery in price in the middle of September and when he came to the conclusion that the re-organisation scheme would be produced in the near future he thought he had made a mistake in selling and decided to buy again.

We notice a number of coincidences in connection with Mr. O'Brien and Mr. O'Driscoll and we recalled both of them on this account. These coincidences were—

1. Mr. O'Brien bought Guaranteed Preference on 25th May, Mr. O'Driscoll bought the same class of stock on the 27th May.
2. Mr. O'Brien sold his stock on 2nd September and Mr. O'Driscoll on 3rd September.
3. Mr. O'Brien bought Debenture and Guaranteed Preference stock on 6th and 11th October. Mr. O'Driscoll bought the same two classes of stock on 13th October.
4. They were both Principal Officers of the Transport Branch of the Department.
5. They kept their bank accounts at the same branch of the Munster and Leinster Bank.

Both Mr. O'Brien and Mr. O'Driscoll assured us that there was no connection whatever between their transactions. Mr. O'Driscoll stated that his first order was given on 24th May with a limit which was not reached until 27th May, that his order for sale was given from Cork where he had gone to attend a funeral; that the branch of the Bank in question is largely used by Civil Servants because it is adjacent to their offices; that he had no official contact with Mr. O'Brien, although they both worked under Mr. Flynn's supervision and that he had no private discussions with Mr. O'Brien concerning railway re-organisation and that he was not following Mr. O'Brien, of whose purchases he was entirely unaware.

We do not consider the mere fact of Mr. Reynolds' being in consultation with Mr. Flynn a confidential matter, and we consider that Mr. O'Driscoll was entitled to act upon any inference he was prepared to draw from it.

(l) MR. JOHN C. DOOLY.

Mr. Dooly purchased some £3,500 of the Company's Preference Stock two days after the date of publication. Although this purchase involved a comparatively small financial outlay, it caused some rather unexpected results and during the course of our Inquiry received considerable attention. In these circumstances we consider that it is a matter which should be dealt with in our Report.

Mr. Dooly has been for some time the Manager of the Company's Road Freight Department. On the 26th October he consulted Mr. W. J. Tunney of Messrs. P. W. Tunney & Co., who was acquainted with him, as to a purchase of railway stock. Mr. Tunney recommended buying Guaranteed Preference Stock, but on the next day, notwithstanding that advice, Mr. Dooly gave an order for Preference stock. This fact had certain repercussions. Mr. Tunney immediately concluded that Mr. Dooly, being a prominent official of the Company had some knowledge as to the prospect of a dividend and wrote to a client on 2nd November to the effect that he had an order from a person connected with the reconstruction who seemed very confident that a dividend would be paid on the Preference stock sooner than anticipated.



In addition, the Broker who acted for the Vendor of the stock bought by Mr. Dooly, saw Mr. Dooly's name on the transfer deed and, knowing his position in the Company, immediately formed the conclusion that the Preference stock was well worth buying. During the next few weeks this Broker bought a very considerable amount of the stock both on his own behalf and on behalf of clients.

We were told by several Stockbrokers in evidence that the name of the Vendor or of the Purchaser appearing on a transfer deed may be of great significance. For instance, if the purchaser of a Company's stock is a person prominently identified with that Company, it may be inferred that the stock is good buying, while the opposite inference can be drawn if such a person appears as Vendor. The use of information acquired in this manner is regarded as being perfectly legitimate.

We were quite satisfied that, while Mr. Dooly was, to a certain extent, engaged in the organisation of Road Transport in the controlled areas of the west of Ireland, he was not in any way connected with the capital reconstruction scheme. Mr. Dooly also deposed that he had no conversation with Mr. Tunney as to the prospect of a dividend and stated that he was buying for a rise in price and not for a dividend. Apart from knowing that his own Department was doing well, he had no knowledge or means of knowledge as to the general profits of the Company beyond being aware of the fact that traffic was heavy, a fact which was known to virtually every businessman who had cause to use the railways. This was corroborated by the evidence of the Chief Accountant who explained to us the various returns which were circulated to the different departments during the year and who satisfied us that it would be impossible to forecast the prospect of a dividend from these separate returns. This could only be done when the entire accounts for the year had been prepared. Furthermore, the Chief Accountant and Mr. Reynolds demonstrated to us that the payment of a dividend on the Company's Junior Stocks in the year 1943 was in considerable measure due to the successful result of the Company's contention as to the proper basis of assessment for Income Tax, a matter which was still undecided in November.

In this case there can be no question of improper use or disclosure of information within our terms of reference as the purchase took place after the proposals were made public. We have dealt with the matter mainly because Mr. Dooly and this purchase were referred to in Mr. Tunney's correspondence and during his evidence, were the subject of examination and cross-examination.

Mr. Dooly's purchase was, in our opinion, quite in order.

6. General Comments on the Evidence and Conclusions Thereon.

With the exception of the cases to which we have specifically referred and which, as we have found, involved no substantial dealings and led to no others, there is not in all the testimony given before us and carefully examined by us any direct evidence of any improper use or disclosure of information. Circumstantial evidence does exist

which tends to support the view that there was improper disclosure. Some of this we have already referred to but it is convenient to summarise its principal features here. The main circumstances which tend to support that view are as follows—

- (a) There were abnormal dealings during the ten weeks preceding the date of publication and a steady rise in prices, particularly in the Junior stocks, up to that date.
- (b) Most of the larger purchasers took the bulk of their purchases in the names of their Bank nominees.
- (c) Mr. John O'Brien, an official of the Transport Branch of the Department of Industry and Commerce was associated with the preparation of the proposals and was a purchaser through the firm of Messrs. P. W. Tunney and Co.
- (d) The firm of Messrs. P. W. Tunney and Co. and Messrs. W. J. Tunney, Fergus Tunney and J. W. Tunney were extensive purchasers.
- (e) Messrs. P. W. Tunney and Company's correspondence seemed to indicate the possession of inside information.
- (f) Mr. John Maher bought exclusively and Mr. Charles Cashin bought extensively through the firm of Messrs. Tunney and Co.
- (g) Messrs. O'Brien, Fergus Tunney, J. W. Tunney, John Maher and Charles Cashin were all members of Milltown Golf Club, and several other members of the Club were purchasers to a considerable extent.
- (h) The extent of the purchases made by the larger purchasers and the circumstance that several of these were made with the assistance of moneys advanced by Banks, even though these advances were more than adequately secured by the deposit of securities, seemed to indicate a remarkable firmness of faith in the prospects of the Company, notwithstanding the apparent counter-indications contained in the Chairman's speech at the Annual General Meeting on the 3rd March, 1943, and the speech of the Minister in Dail Eireann on the 26th May.
- (i) There was a rumour in circulation before the date of publication which was precisely accurate in giving the capital of the new company at £20,000,000.

We believe that the facts and circumstances which we have set out above and which tend to support the view that there was improper disclosure either have been, or are capable of being, reasonably explained in a way consistent with the absence of any such disclosure. We have already dealt with a number of such facts and circumstances on the basis that they have been reasonably explained, and we are of opinion that all of them are capable of being so dealt with. Furthermore, we are of opinion that they are definitely outweighed by circumstantial evidence tending to negative the existence of any

improper disclosure of information, other than the case specifically dealt with. This evidence we summarise as follows:—

- (a) With the one exception mentioned above, none of the rumours, which were referred to in evidence, contained a single accurate reference to the confidential and secret matters which were from time to time under consideration in connection with the re-organisation proposals.
- (b) The absorption of the Dublin United Transport Company by the proposed new statutory company had been in contemplation from the very outset and had been referred to in almost every memorandum or minute dealing with the matter of capital re-organisation. Had there been any disclosure of information, the matter of this absorption could hardly have escaped mention. There was no evidence whatever of any rumour of such absorption nor were there any significant dealings in the Transport Company's shares during the period under review.
- (c) Up to the 2nd September the proposal put forward by Mr. Reynolds, and considered by the Department, envisaged the formation of a new company with a capital of £10,000,000 to acquire two existing companies with a combined nominal capital of £14,250,000. The Dublin United Transport Company was recognised as being in a strong financial position and, throughout the consideration of the proposals, it was estimated that at least £2,000,000 would be required to purchase its shares and debentures, leaving £8,000,000 available for the acquisition of the Railway Company's capital of £12,691,451. This would have involved a reduction of over £4,500,000 in nominal value, a sum which is in excess of the total nominal value of the Ordinary, Preference and Guaranteed Preference stocks. Unless the three Junior stocks were to be eliminated, a severe reduction in all stocks including the Debenture would have been inevitable, possibly a reduction even more drastic than that effected in 1933. This was the situation which would have been the subject of any disclosure prior to the 2nd September, 1943. Any such disclosure would not be calculated to lead to the belief that the Company's stocks were good buying. As we have found, however, the abnormal dealings generally started in the middle of August, and two of the larger purchasers effected practically all their purchases in July.
- (d) The ultimate and effective proposal, namely, for a company with a capital of £20,000,000, was not mentioned until the 30th September. The actual details were first worked out by Mr. Reynolds on the 4th October and were not known to the Department until the 7th, some seven weeks after abnormal dealing generally had commenced. These proposals were naturally provisional and so remained

until the 19th October, when the Government decided not to offer any objection to the issue of the circular to the Stockholders.

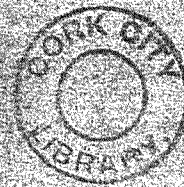
- (e) The substantial rise in prices in July can be partly attributed, as already mentioned, to the purchases effected by Messrs. Murphy and O'Donohoe. This might well have encouraged other buyers and engendered a feeling of mild optimism. Granted such a feeling, the material and relevant information in relation to the Company's affairs and prospects already legitimately available to the investing public might reasonably afford a justification for investment at the prices then ruling. Heavy buying by Messrs. Maher, Cashin and others in the latter half of August was sufficiently noticeable to stimulate further the belief that the Company's stocks were good buying and to encourage other buyers to come in on a rising market.
- (f) The existence of the suspicions prevalent upon the Stock Exchange that the big buyers had inside information might well lead others to follow their example and further stimulate the optimistic trend of the market.
- (g) The specific instances of improper use of information led to no substantial or significant dealings.
- (h) With the exception of the specific instances of improper use or disclosure to which we have already referred, not a single witness was able to give any direct evidence of any instance of improper use or disclosure of information.

We have already dealt with the specific instances of improper use and disclosure of information and our next paragraph refers only to the question of improper disclosure of information exclusive of these instances.

We have expressed the opinion that the circumstantial evidence tending to support the view that there was improper disclosure either has been, or is capable of being, adequately explained upon some other basis and is definitely outweighed by the circumstantial evidence tending to negative the possibility of such disclosure. The larger purchasers, whose dealings we considered it necessary to examine in some detail, all gave explanations as to their reasons for purchasing. Our review of the evidence taken as a whole leads us to the conclusion that these explanations are in every case reasonable and ought, therefore, to be accepted. Each of these purchasers denied that he was in any way assisted by inside information. These denials, we are satisfied, ought likewise to be accepted.

7. Findings as to Improper use or Disclosure of Information.

We are now in a position to state our findings upon the second matter mentioned in our terms of reference, namely: the extent to which any dealings in Great Southern Railways stocks between the 1st



January and the 18th November, 1943, were attributable to the improper use or disclosure of information concerning proposals for the capital re-organisation of the Company. We find as follows:—

1. There has been no improper use of information concerning the proposals for the capital re-organisation of the Great Southern Railways except the instances we have specifically mentioned, which we consider unimportant, and to which no other dealings can be attributed.
2. There has been no improper disclosure of such information except in the one case we have mentioned, which we consider unimportant and to which no dealings can be attributed.

We desire to record our high appreciation of the services of our Secretary, Mr. Malcolm H. G. Ellis, and our sense of deep indebtedness to him for his invaluable assistance. His duties were far from being confined to matters purely secretarial. But for the marked ability, efficiency, and tact which invariably characterised his work, our task would have been much more difficult and prolonged.

(Signed) A. K. OVEREND.

(Signed) CAHIR DAVITT.

(Signed) BARRA Ó BRIAIN.

(Signed) MALCOLM H. G. ELLIS.

Secretary.

18th September, 1944.

SCHEDULE.

Part One.

1. On the 16th December, 1943, a letter was written to the Secretary of the Company requesting that the Tribunal should be furnished with particulars as follows:—

- " (1) A list of all persons to whom (in the aggregate) more than £500 (nominal value) of the Company's Stock was transferred, during the period from the 1st January, 1943, to the 30th November, 1943. This list should contain full particulars of such transfers, i.e., the dates of transfer and of registration; the amounts transferred; the numbers of the stock certificates or other particulars for the identification of the transfers; the class of stock; the names of the purchasing Brokers and the names and addresses of the purchasers; and whether they still retain their holdings.
- " (2) A concise history, with all the relevant dates, of the formulation of the scheme for the Re-organisation of the Capital of the Company, and the various steps therein.
- " (3) A statement showing the amount (in nominal value) of the transfers of each class of the Company's Stocks registered in each week from that ending Saturday, 1st May, 1942, to Saturday, 27th November, 1943.
- " (4) The names and addresses of all members of the Board of Directors of the Company who held office at any time during the current year."

2. On the 16th December, 1943, a letter was written to Mr. A. P. Reynolds, the Chairman of the Company, asking him to furnish a concise history, with all relevant dates, of the formulation of the scheme for the Re-organisation of the Capital of the Company, and the various steps therein.

3. On the same day a letter was written to Mr. R. C. Ferguson, Secretary of the Department of Industry and Commerce, asking him to furnish a concise history, with all relevant dates, of the formulation of the scheme for the Re-organisation of the Capital of the Company and the various steps therein.

4. A circular letter was printed and addressed to all Stockbrokers in the State requesting them to furnish "for the information of the Tribunal" returns as follows:—

- " (1) A list of all persons for whom, or on whose instructions you actually purchased, or from whom you received instructions to purchase, in the aggregate, more than £500 (nominal value) Great Southern Railways Stocks between 1st January, 1943, and 18th November, 1943. This list should contain full particulars of such purchases, as per enclosed form, which should be signed in the name of the firm and countersigned by one of the Principals.



- "(2) A statement, showing the total amounts of the purchases made by, or through, your firm, of each class of Great Southern Railways Stock during each week (ending Saturday) from 9th January, 1943, to 20th November, 1943, (both inclusive)."

The tabular form enclosed in this letter contained ten columns headed:—

- (1) Date of purchase?
- (2) Who gave the Instructions to Purchase?
- (3) Nominal Amount and Class of Stock?
- (4) Price Paid and by Whom?
- (5) Name of Transferee?
- (6) Was Transferee Registered and as of what address?
- (7) Date of Re-sale (if any)?
- (8) Price paid on Re-sale?
- (9) Who paid price on Re-sale?
- (10) Name of Transferee on Re-sale (if known)?

Directions were added that, in reply to question in columns 2, 4, 5, 9 and 10, the name, full postal address and description should be given and that, in cases where instructions to purchase were received but not carried out, only columns 1, 2 and 3 need be completed.

5. On the 6th January, 1944, a letter was written to all the Banks in the State asking them to furnish particulars as follows:—

"Particulars of the several amounts of Great Southern Railways Stock of each denomination which, during the period from 1st January, 1943, to 18th November, 1943, were transferred into, or in respect of which instructions were received to purchase and/or transfer into the name of your Bank, or into the name of any officer of your Bank or any nominee, or in respect of which your Bank held transfers in blank. In each case the following details (so far as applicable thereto) should be given:

- (a) Date of each purchase, and/or transfer?
- (b) Names of persons from whom instructions to purchase were received?
- (c) What nominal amount and denomination of Stock was the Bank instructed to purchase?
- (d) Nominal amount and Denomination of Stock (if any) actually purchased and/or transferred, in each case?
- (e) Name of transferee?
- (f) Who paid the purchase money?
- (g) For whom was, and/or is, the Stock held?
- (h) Has there been any re-sale?
- (i) Date of re-sale (if any)?
- (j) Name of transferee on re-sale (if known)?"

Directions were added that in answer to questions (b), (e), (f), (g) and (j) the name, full postal address and description should be given.

6. On the 13th December, 1943, the following advertisement was inserted in the "Irish Times," the "Irish Independent," the "Irish Press" and the "Cork Examiner":—

TRIBUNAL OF INQUIRY—RE DEALINGS IN G.S. RAILWAYS STOCKS

NOTICE

By Order dated the 1st day of December, 1943, the Minister for Industry and Commerce appointed a Tribunal to investigate and report on:—

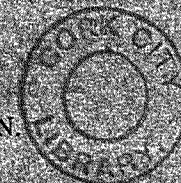
- (a) dealings in Great Southern Railways Stocks between 1st January, 1943, and 18th November, 1943; and
- (b) the extent (if any) to which such dealings were attributable to the improper use or disclosure of information concerning proposals for the capital re-organisation of the Great Southern Railways.

This Tribunal proposes to hold a preliminary sitting at the Four Courts, Dublin, on Wednesday, the 22nd day of December, 1943, at 11 o'clock in the forenoon, with a view to ascertaining the class of evidence available, settling procedure, etc., etc.

Any person (not already communicated with) who can give any information on the subject of enquiry is REQUESTED TO ASSIST in the performance of this public duty by sending in his name and full address (accompanied, if possible, by a concise statement of the matters of which he has knowledge) as soon as may be to the Secretary to the Tribunal.

Mr. MALCOLM H. G. ELLIS,
Room 201,
Four Courts,
DUBLIN.

By direction of the Tribunal,
MALCOLM H. G. ELLIS,
Secretary.



Part Two.

Witnesses Examined by The Tribunal

Great Southern Railways.

A. P. Reynolds, Chairman (Recalled twice);
H. G. Boardman, Secretary (Recalled twice);
E. C. Bredin, General Manager;
The Rt. Hon. James MacMahon, Director (Recalled once);
James Dwyer, Director;
James P. Goodbody, Director (Recalled once);

Joseph Patton, Official of the Northern Bank, Ltd. ;
 John D. Mooniey, Official of the Royal Bank of Ireland, Ltd. ;
 William G. Murphy, Official of the National City Bank, Ltd. ;
 William J. Connell, Official of the Hibernian Bank, Ltd. ;
 Arthur E. O'Connor, Official of the Munster & Leinster Bank, Ltd.
 (Recalled once) ;
 Gervase C. G. Neville, Official of the National Bank, Ltd. (Recalled
 once) ;
 Patrick J. Stokes, Manager, Dame Street Branch, Munster and Leinster
 Bank, Ltd. ;
 Richard S. Sandes, Joint Manager, College Green Branch, National
 Bank, Ltd. ;
 Frederick E. Howell, Manager, Stephen's Green Branch, Provincial
 Bank of Ireland, Ltd. ;
 Weldon J. Tarleton, Sub-Agent, College Green Branch, Bank of
 Ireland ; and
 William A. Latimer, Pro-Manager, College Green Branch, Ulster
 Bank, Ltd.

Dublin United Transport Company, Ltd.

Frank Lemass, Secretary (Recalled once) ;
 Mrs. I. Sheils, Confidential Secretary to Mr. Reynolds ;
 John O'Brien ;
 Miss Vivienne McNieve, Shorthand-typist ; and
 Mrs. Patricia White, Shorthand-typist (Resigned).

Other Witnesses.

George O'Callaghan Westropp, The O'Callaghan (Recalled once) ;
 John Maher, Controller and Auditor General (Recalled once) ;
 Michael F. O'Hanlon, Ex-Senator (Recalled once) ;
 Charles F. Cashin, Manufacturers' Agent (Recalled once) ;
 Blayne Hamilton, Insurance Broker (Recalled once) ;
 William C. Odum, Governor of the Bank of Ireland ;
 Arthur Power, Author ;
 Patrick Murphy, Company Director ;
 Daniel J. O'Donohoe, Company Director ;
 W. J. Kelly, Company Director ;
 David Frame, Company Director ;
 James J. Walsh, Company Director ;
 Arthur R. Brassington, Insurance Broker ;
 John T. O'Farrell, Trade Union Official ;
 James O'Mara, Company Director ;
 Michael W. O'Rielly, Company Director ;
 Oliver Chance, Medical Practitioner ;
 Thomas J. Coyne, Controller of Censorship ; and
 Donal McClement, Solicitor.

