

No. 50/SS/89

IN THE MATTER OF THE VALUATION ACTS

AND IN THE MATTER OF SECTION 5 OF THE VALUATION
ACT 1988

AND IN THE MATTER OF PREMISES MAP REFERENCE
NUMBER 6B ALEXANDRA ROAD THE ELECTORAL DIVISION
OF WARD NORTH DOCK IN THE COUNTY BOROUGH OF
DUBLIN

BETWEEN

CARIBMOLASSES COMPANY LIMITED

APPELLANT

AND

THE COMMISSIONER OF VALUATION

RESPONDENT

Judgment of Gannon J., delivered the 24th day of January 1990.

This is an appeal by way of Case Stated from a
decision of the Valuation Tribunal given on the 24th of April
1989. The Commissioner of Valuation being dissatisfied

therewith as being erroneous in point of law requested this Case Stated pursuant to Section 5 of the Valuation Act 1988. The subject matter of the decision was an appeal by the above-named Appellant against the fixing by the Respondent of a valuation of £400 on hereditaments their property described as "storage tanks and yard at Alexandra Road Dublin". The point of law as expressed in the Case Stated at paragraph 6 thereof is as follows:

"The opinion of the High Court is requested as to whether the Tribunal was correct in holding that the tanks in question should be considered as non-rateable plant".

The findings of fact by the Tribunal are set out in ten subparagraphs to paragraph 3 of the Case Stated and they are as follows:

- "(1) The items in dispute consisted of two tanks located at North Dock Dublin on the old Goulding fertilizer site. The tanks were originally sulphur tanks.
- (2) The tanks are lagged and have steam coils on the floor inside.
- (3) Steam for the heating coils may be produced, if required, by means of an oil fired burner outside the tanks.
- (4) Crude molasses is pumped in by ship at 40 degrees celsius by means of a pipeline.
- (5) The crude molasses is held and contained in the tanks which are used for holding and containment and also for blending.
- (6) Crude molasses coming from different sources may

be of different consistency. Crude molasses is normally cane molasses. The viscosities of the molasses varied according to the source of supply. Each consignment of molasses is unique and no two shipments of crude molasses are the same. Accordingly the crude molasses is mixed to form a uniform blend by being pumped from one of the two tanks to the other to form a homogeneous blend.

- (7) In practice the heating coils in the tanks are not used and the molasses is taken out of the tanks by the force of gravity and steam is applied to the pipes outside the tanks to enable the molasses to flow to the distribution point for the lorries to receive the same.
- (8) Upon leaving the tanks water is added to the molasses outside the tanks to form "standardized molasses" to meet the specific requirement of purchasers. The water added outside the tank is hot water and this is injected at the main pumps outside the tanks.
- (9) The purchasers were generally compound feed mills, the alcohol and yeast industries, and large farmers. Farmers use the molasses as a direct feed for livestock.
- (10) Customers specify their requirements by reference to levels of dry matter, viscosity, sugar content and other characteristics, and the requirement is embodied in a contract which provides for the period over which that customer will draw his

requirement. There would be nine or ten different specifications given in any one week of production. Customers take the product as they need it. The primary change takes place at the pumps by the injection of hot water as described above after the molasses has left the tanks."

The submissions addressed to the Tribunal are thus summarized in the Case Stated at paragraph 4

"4. It was submitted by Counsel on behalf of the Appellant that the tanks in question constitute non-rateable plant as set out in the Schedule at Section 8 of the Valuation Act 1986.

Counsel on behalf of the Respondent submitted that the tanks in question are used primarily for the purpose of containment of the molasses within them and that the change from crude to standardized molasses takes place outside the tanks after the crude molasses has left the tanks."

The Tribunal states its determination in paragraph 5 of the Case Stated which reads

"5. On the basis of the facts as found above the Tribunal concluded that the tanks in question constitute non-rateable plant as the Tribunal concluded that the tanks in question are primarily used to induce a process of change in the substance contained in them. The Tribunal concluded that the tanks in question must be considered as part of the overall plant at the

Appellant's premises as being part of an integral operation used for inducing a process of change."

That determination as so expressed seems to me to state two findings of facts namely:

- (a) that the tanks (constituting the rateable hereditaments) are used primarily to induce a process of change in the substance contained in them, and
- (b) that their use thus is an integral part of an overall operation the purpose and effect of which is to induce that change.

Whether that determination so expressed correctly leads to the conclusion: "that the tanks in question constitute non-rateable plant" now appears to be the question of law submitted.

On this hearing Mr. O Cuiv for the Commissioner by whom the Case Stated was requested informed me that it is admitted that the tanks, being the hereditaments in question, constitute "plant" as defined in Section 1(2) of the Valuation Act 1986. The question of law, he states, is to determine whether as fixed properties they come within Category 5 in the Schedule inserted in the Valuation (Ireland) Act 1852 by Section 3 of the Valuation Act 1986, having regard to the amendment by substitution effected to the Valuation (Ireland) Amendment Act 1860 by Section 7 of the Valuation Act 1986.

The Tribunal had received written submissions and had an oral hearing on the 31st of March 1989. The Tribunal delivered a written judgment on the 24th of April 1989 which is incorporated with this Case Stated. In it there appears

an error of fact which is corrected in the Case Stated. The correct fact is that the process of changing the standard of molasses is achieved by water dilution at the time when the molasses is being withdrawn out of the tank. The statements of fact at subparagraphs (8) and (10) in paragraph 3 of the Case Stated are correct and the summary on this point of Mr. O'Connor's evidence and of Mr. O Cuiv's submission stated in the judgment is incorrect. This Court is satisfied from a perusal of the judgment delivered by the Tribunal and its summary of the evidence (as corrected) that the findings of fact as stated in the Case Stated are supported by the evidence so summarized and are reasonable. But the decision which evoked the request for this Case Stated is not simply a resolution on a dispute merely of facts. It involves making a correct interpretation of the complex requirements of the legislature as to what facts are pertinent and what inferences of fact and law must be deduced. In the circumstances the failure of the Tribunal to identify a definable point of law for the decision of this Court, leaving the Court and Counsel to guess what is the precise point of law it is being asked to decide, is understandable however undesirable.

The manner in which the Tribunal dealt with questions of law is disclosed in the final four paragraphs of the judgment delivered on the 24th of April, 1989. They read as follows:

"Counsel for both parties referred to the law.

It is not, however, proposed to deal with the law in this judgment as the same is set out at pages 17 - 19 of the Tribunal's judgment in the Premier Molasses case.

In the Premier Molasses case the Tribunal found that taking the six tanks as one integrated operation that then that operation consisted of inducing a process of change in the substance contained or transmitted and that the tanks, taken as one integrated whole, were designed and used primarily for that purpose.

Applying the reasoning of the Premier Molasses case, the Tribunal is satisfied that the plant is, as a whole, used for the purpose of inducing a process of change. What is left for the Tribunal to decide is whether on the facts of this appeal the same should be distinguished from the Premier Molasses case in that on the evidence in the Premier Molasses case the process of change took place within the tanks and on the evidence in this case the main part of the process takes place at the pumps.

Taking all the evidence and submissions into consideration the Tribunal is satisfied that there is no essential difference between the process in this case and that in the Premier Molasses case in particular the tanks and whole plant are part of an integral operation used for the purpose of inducing a process of change."

I have been furnished with a copy for the purposes of this hearing of the judgment given by the Tribunal on the 13th of March 1989 in the "Premier Molasses Case" about three weeks

previous to the hearing by the Tribunal of this instant appeal. I presume the present Appellant had been supplied with a copy of that judgment of the 13th of March 1989 before attending for the hearing on the 31st of March 1989 of their appeal. For the purpose of this Case Stated I have confined my consideration of the judgment in the Premier Molasses case to those pages to which reference is made at page 7 of the judgment of the Tribunal given in this case. The requirements of the legislature applicable to the case I am now considering, which were also for consideration in the Premier Molasses case, are set out in the judgment of the Tribunal given on the 13th of March 1989 as follows:

"THE LAW

What are rateable hereditaments are described in Section 12 of the Valuation (Ireland) Act 1852 as extended by Section 2 of the Valuation Act 1986 and, therefore, the categories of rateable valuation are those set out therein.

The original Section 7 of the annual revision of Rateable Property (Ireland) Amendment Act 1860 was as follows:

In making the valuation of any mill or manufactory, or building erected or used for any such purpose, the Commissioner of Valuation shall in each case value the water or other motive power thereof, but shall not take into account the value of any machinery therein, save only such as shall be erected and used for the production of motive power.

The amendments made to that section by Section 7 and 8 of the Valuation Act 1986 are as follows:

"7. The following section is hereby substituted for section 7 of the Act of 1860:

"7(1)(a) In making the valuation of any mill or manufactory, or building erected or used for any such purpose, the Commissioner of Valuation shall in each case value the water or other motive power thereof, but shall not take into account the value of any machinery therein, save only such as shall be erected and used for the production of motive power.

(b) For the purposes of this subsection, machinery erected and used for the production of motive power includes electrical power connections.

(2) The Commissioner of Valuation shall value plant falling within any of the categories of plant specified in the Schedule to this Act (inserted by the Valuation Act, 1986).

(3) In valuing plant referred to in subsection (2) of this section, the Commissioner of Valuation shall not take into consideration a part of any plant which moves (or is moved) mechanically or electrically, other than a telescopic container."

8(1) The Act of 1860 is hereby amended by the insertion after Section 15 of the following Schedule:

"SCHEDULE

Reference Number	Categories of Plant
1.	All constructions affixed to the premises comprising a mill, manufactory or building (whether on or below the ground) and used for the containment of a substance or for the transmission of a substance or electric current, including any such constructions which are designed or used primarily for storage or containment (whether or not the purpose of such containment is to allow a natural or a chemical process to take place), but excluding any such constructions which are designed or used primarily to induce a process of change in the substance contained or transmitted.
2.	All fixed furnaces, boilers, ovens and kilns.
3.	All ponds and reservoirs.

Prior to the enactment of the 1986 Act there were a number of cases which set out to define what was meant by "machinery". The Tribunal finds of particular assistance (and has found in the past) the judgment of Finlay P. (as he then was) in the Beamish and Crawford case (8th May 1978 unreported) and approved by the Supreme Court on 23rd July (1980 I.L.R.M. 149). In particular the learned Judge held that it was inappropriate in considering, to use a neutral term, any piece of equipment used in a manufactory to consider its component parts piecemeal for the purpose of designating some parts as machinery and some as not."

I think it necessary to add that the Schedule effecting the extension to Section 12 of the 1852 Act as referred to in Section 2 of the 1986 Act is set out in Section 3 of that Act. That section contains a Schedule of categories of fixed property which includes at Reference Number 1 "All constructions affixed to land or tenement" (subject to exceptions not relevant), and at Reference Number 5 the categories of plant set out in Section 8 of the 1986 Act, subsection (1) of which is quoted above. It is agreed that the tanks are plant as defined in subsection (2) of Section 1 of the 1986 Act. The question is whether the determination by the Tribunal that they are non-rateable plant is correct or erroneous in law. It is evident that this Court is not required to consider

- (a) the amount of the valuation made by the Commissioner, nor
- (b) what matters were taken into account or into consideration by the Commissioner in making the valuation.

The Court is asked to consider whether in purporting to discharge the duty imposed on him by Section 7 (2) of the 1860 Act as substituted by Section 7 of the 1986 Act the Commissioner did correctly or incorrectly understand and apply the exclusion provision in regard to the categories of plant at Reference Number 1 in the Schedule to the 1860 Act inserted by Section 8 of the 1986 Act. It is such excluded plant that is described for convenience as non-rateable plant.

In the course of the hearing my attention was drawn to the decision of Finlay P. (as he then was) in Beamish and Crawford .v. The Commissioners of Valuation affirmed on appeal by the Supreme Court in 1980 I.L.R.M. 149 in which he held "fermentation tanks" and "conditioning tanks" in a brewery were "machinery". It was also submitted that the 1986 Act was enacted to overcome that difficulty. In the judgment of Costello J. delivered on the 9th May 1989 (subsequent to the decision the subject of this Case Stated) in Pfizer Chemical Corporation .v. The Commissioner of Valuation he stated:

"Whilst it is true that crude beet molasses is an important raw material in the production of citric acid I do not think that the authorities to which I have referred require me to hold that every tank or receptacle in which a raw material used in the production of a final product in a factory is placed must be regarded as "machinery" for the purposes of Section 7 of the 1860 Act. It is true that the molasses in these five tanks is not just left in storage. What falls for consideration is whether the special features of the tanks to which I have referred

mean that the tanks should be regarded as "machinery". I think so to hold would do violence at once to the English language and commonsense. These receptacles are tanks - not machines. The fact that items of equipment are installed in them to allow the molasses to be agitated, to permit it to be heated, and to permit the molasses to be moved from one tank to another and subsequently to the manufacturing plant does not have the effect of altering their character."

In the course of his judgment the learned Judge further commented later as follows:

"I should add for the sake of completeness that the problems posed by these appeals have been tackled and hopefully settled in relation to future cases by the Valuation Act, 1986 which declared certain categories of fixed property (including the type of installations in this case) to be rateable hereditaments."

It is significant that in those cases what was claimed was exemption under Section 7 in respect of "machinery". It is also significant that in the several cases cited with reference to the application of Section 7 the decisions as to whether apparatus was or was not "machinery" always took account not only of the actual physical nature and construction of the structure or apparatus but also its functional purpose and relationship to the business of the rated occupier. For so long as the legislation left the Courts without a definition of the word "plant" the Courts appear to have favoured a meaning most likely to be understood according to the business circumstances of the lay litigant. See for examples the speeches in the House of

Lords in the two appeals in 1982 Inland Revenue Commissioners .v. Scottish and Newcastle Breweries 1982 1 W.L.R. 322 and Coal Brothers Limited .v. Phillips 1982 1 W.L.R. 1450.

The essential difference between the parties here relates to the interpretation of the wording of the excluding provision in the Schedule introduced by Section 8 of the 1986 Act. For the Commissioner, Mr. O Cuiv accepted that for the purpose of their business the Appellant did induce a process of change in the substance at the time of delivery to suit the differing requirements of purchasers and that this took place at the tanks. But he submitted that because the change did not take place within them the tanks, being the rateable hereditaments, were not constructions used to induce a process of change in the substance for which they were being used as containers. He pointed out that the changed substance as delivered to the purchaser had not undergone change while in the tank. Mr. Cooke for the Respondent submitted that the process of change in the substance contained in the tank was a necessary part of the business of providing each different customer with a substance differing in specification according to his special requirement. He pointed out that the process commenced with the pumping into one tank of different quantities of molasses which differed in viscosity and consistency according to the different sources of supply. The mixing in the tank to achieve a homogeneous blend, he argued, was the first stage of an induced process of change which was completed by enabling each customer take at delivery the standard suitable to his specific requirement. He argued that the external apparatus

which enabled the final stage of the induced change to take place immediately outside the tank, being the containing structure, was as much an essential part of the process as if such apparatus had been enclosed in and incorporated as an internal part of the construction or tank. He further submitted that no question of storage other than incidental arises, and the type of containment in use in this case is not of the nature indicated in the Schedule introduced by Section 8 of the 1986 Act.

As with so many pieces of legislation which begin as having general application but are later amended for application to specific circumstances the Valuation Acts of 1852 and 1860 have now become as difficult for the Commissioner of Valuation as for the layman setting up in business. It seems to me the description of categories of plant designated at Reference Number 1 in the Schedule to the 1860 Act introduced by Section 8 of the 1986 Act makes distinctive contrast between two types of containment of substance. There are two types of structure therein described. The one is primarily designed or used for storage or containment. If it is so used it is a rateable hereditament even though during the period of storage some natural or chemical process takes place. (No reference is made here to a change of substance). The other is primarily designed or used "to induce a process of change in the substance contained". If it is so used it is not a rateable hereditament even though the process requires containment for a determined or indeterminate period. The use of the qualifying word "primarily" indicates some degree of latitude in relation to factual circumstances of purpose. It also

conveys to my mind that it is not intended that the mere containment should be the only means of inducing change of substance. It seems to me that if the containment assists or is an integral part of the process of change, even though merely as ancilliary to some other catalytic agency, it comes within the ambit of being used to induce a process of change. In such circumstances the construction is not a rateable category of plant. This is, I think, a necessary corollary to the circumstances prescribed in which by contrast it would be a rateable hereditament notwithstanding that the process of change might take place.

In my opinion the Tribunal has correctly interpreted the provisions of the Valuation Act 1986 and has applied the law correctly to the facts as found as stated in the case submitted.

In my opinion the decision of the Tribunal is not erroneous in law and the Tribunal is correct in law in holding that the tanks in question should be considered as non-rateable plant.

S. G.
20/1/90