THE HIGH COURT

[2021] IEHC 534

[Record No. 2020/186 SS]

BETWEEN

TEARFUND IRELAND LIMITED

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

JUDGMENT of Mr. Justice Barr delivered electronically on the 28th day of July, 2021

Introduction

1. The appellant (hereinafter referred to as "*Tearfund*") is a registered charity. It holds a lease of offices on the second floor of 22/24 Foley Street, Dublin. By a determination issued on 5th April, 2019, the Valuation Tribunal ruled that the premises occupied by Tearfund was exempted from rates pursuant to the Valuation Act 2001 (as amended) and in particular, pursuant to para. 16(a) of schedule IV.

2. The respondent (hereinafter referred to as "*the Commissioner*") requested the Tribunal to state a question for the determination of this Court. The question which has been posed to the court is the following:-

> *"Whether the Valuation Tribunal was correct in law in holding that the meaning intended by the Oireachtas to be assigned to charitable purposes in para. 16 of schedule IV of the 2001 Act includes the "advancement of religion" and that the advancement of religion is a charitable purpose for the purposes of the 2001 Act?"*

3. In a nutshell, the issue which the court has to decide in these proceedings, is whether the Tribunal was correct in holding that the phrase "*charitable purposes*" in paragraph 16 (a) of schedule IV of the 2001 Act, included the advancement of religion as provided for in *Commissioners for Special Purposes of Income Tax v. Pemsel* [1891] AC 531; or, as argued by the Commissioner, that phrase continued to bear the meaning which it had at common law for rating purposes for over 100 years, as not including the advancement of religion.

Background

4. The essential facts were not in dispute between the parties. They were succinctly summarised by the Tribunal at para. 11 of its determination in the following way:-

> *"i The Property is a second-floor office in a five story third generation office building known as Ulysses House situated at 22-24 Foley Street. The floor are of the office measures 169.34 square metres.*
>
> *ii The Appellant is in occupation of the Property under a Lease dated the 12th October 2012.*
>
> *iii The Appellant was incorporated in 2000 as a company limited by guarantee not having a share capital. It has been operating as an international charity since 2008 with its headquarters based in Dublin.*

iv The Appellant's history and origins come from a movement of Evangelical Christians in the UK and Ireland having a conviction of faith to respond to the millions of suffering across the world due to extreme poverty, injustice, natural disasters and suffering in the late 1960's. The Biafra famine led many Christians to commit funds to the Evangelical Alliance to help alleviate poverty and suffering. Originally named 'The Evangelical Alliance Relief Fund', it was later abbreviated to the acronym TEAR Fund, before finally changing to Tearfund.

v The Appellant is a separate independent faith-based organisation with links to the Tearfund in the UK.

vi Article 3 (A) of the Appellant's Memorandum of Association states that the objects for which the Appellant is established are:

(a) To relieve poverty, suffering and distress and prevent disease and ill health among the peoples of the World; and

(b) to promote Christian education and evangelism among the peoples of the World.

And as to both objectives set out in paragraphs (a) and (b) in this sub-clause by working in partnership with or through fellow Christians who share the conviction that true meaning in life and fulfilment for life can only be found through a faith and trust in Jesus Christ, such objectives to be pursued in accordance with the following principles:-

(i) The Bible is the authoritative Word of God and is the guiding rule of all Christian belief and behaviour;

(ii) The supervision of any project supported by the Company must be in the hands of a Christian or Christians who accept sub-paragraph (i) above and who want to introduce the people whom they serve to that fullness of life which comes through faith in Jesus Christ alone; and

The Basis of Faith set out in clause 12 of this Memorandum of Association which the Basis of Faith of the Evangelical Alliance.

vii The Appellant is a charitable organisation within the meaning of Section 3 of the Act.

viii The Property is in use as an administrative office where meetings of the Appellant's Board and subcommittees are held and where staff plan, manage and administer the Appellant's activities and projects pursuant to the objects in its constitution."

Relevant Statutory Provisions

5. It is appropriate to describe the relevant provisions of the Valuation Act 2001 (as amended) hereinafter referred to as ('the Act'), which are germane to this case. Those of special significance will be quoted in full or in part, as appropriate.

6. It is necessary to set out the long title to the Act, as Tearfund has placed considerable emphasis on the fact that in the long title it was made clear that the Act was revising aspects of the law on the valuation of properties and, in particular, was making new provisions in relation to properties that would be exempt from the payment of rates. The long title states:-

> *"An act to revise the law relating to the valuation of properties for the purposes of the making of rates in relation to them; to make new provision in relation to the categories of properties in respect of which rates may not be made and to provide for related matters."*

7. Section 3 of the Act contains a definition of "charitable organisation", which is a new concept introduced in the Act. It provides that "charitable organisation" means a company, or other body corporate, or an un-incorporated body of persons which complies with a specified list of conditions. This list effectively relates to provisions that must be in place for the proper governance of the organisation. In addition, it provides that in the case of a company it has to comply with the stipulations set out in subparagraphs (iii) and (vii) of para. (a). This effectively provides that the memorandum of association or articles of association, as appropriate, of the company must state, as its main object or objects, a charitable purpose and specify the purpose of any secondary objects for which provision is made to be the attainment of the main object or objects.

8. Section 3 also provides that "relevant property" shall be construed in accordance with schedule III of the Act. This is not of particular relevance here because there was no dispute that the premises was a relevant property.

9. Section 8 deals with the repeal of previous enactments. These are set out in schedule I to the Act. The schedule includes s.63 of the Poor Relief (Ireland) Act, 1838. This is of relevance because much of the case law on the meaning of "charitable purposes" for the purpose of rating law was based on an interpretation of this section.

10. Section 15(1) provides that subject to the following subsections in that section, and to ss. 16 and 59, relevant property shall be relatable. Section 15(2) provides that subject to ss. 16 and 59, relevant property referred to in schedule IV shall not be rateable.

11. Schedule IV to the Act deals with relevant property that is not rateable. It lists nineteen separate classes of buildings which, in certain circumstances, will be exempt from the payment of rates. The most significant paragraphs from the point of view of this action are paras. 7 and 16(a), which are in the following terms:-

> *"7. Any land, building or part of a building used exclusively for the purposes of public religious worship.*
>
> *16. Any land, building or part of a building which is occupied by a body, being either (a) a charitable organisation that uses the land, building or part exclusively for charitable purposes and otherwise than for private profit […]".*

Submissions on behalf of the Commissioner

12. Mr. Dodd BL on behalf of the Commissioner, accepted that the Act of 2001 consolidated the law on rating in this jurisdiction. He accepted that some of the provisions relating to what classes of property, and in what circumstances, they may be exempt from payment of rates, were new, *e.g*. paras. 2, 3, 4 and 15 in schedule IV of the Act. Some of the exempted premises mentioned in the schedule, had been exempted under s.63 of the 1838 Act, such as the exemption provided for in para. 7, subject to the additional proviso that the building had to be used for public religious worship, rather than private religious worship. Other exempted buildings had also been exempt under s.63, such as those provided for in paras. 8 and 9.

13. Counsel submitted that the main issue in this case concerned the exemption provided for in para. 16(a) and in particular, whether the reference to "charitable purposes" therein, meant the restrictive interpretation of that phrase which had been applied in the common law in Ireland since 1914; or whether it constituted a radical change by bringing the interpretation of that phrase for rating purposes, back to the wide definition of "charitable purposes" given by the House of Lords in *Pemsel*'s case.

14. Counsel submitted that while the wide definition of "charitable purposes" given in the *Pemsel* case, which included advancement of religion as a charitable purpose, had been applied in three subsequent Irish cases, he submitted that from 1914 onwards, the Irish Courts at the highest levels had consistently ruled that in the interpretation of rating statues, charitable purposes, did not include the advancement of religion: see *O'Neill v. Commissioner for Valuation* [1914] 2 IR 447; *McGahan & Ryan v. Commissioner of Valuation* [1934] IR 736; *Elliott and the Trustees of the Methodist Church in Ireland v. The Commissioner of Valuation* [1935] IR 607; *Barrington's Hospital v. Commissioner of Valuation* [1953] IR 299*; Trustees of the College of Maynooth v. Commissioner of Valuation* [1958] IR 189 and *Brendan v. Commissioner of Valuation* [1969] IR 202.

15. Counsel submitted that the law was very clear prior to the enactment of the 2001 Act, that the phrase "charitable purposes" for rating purposes, did not include the advancement of religion.

16. It was submitted that when the Oireachtas used the phrase "charitable purposes" in para. 16(a), it was presumed to be aware of the prior interpretation of that phrase in the decisions handed down by the courts. It was presumed to have intended that it should have the same meaning when using the same phrase in the 2001 Act. In this regard counsel referred to the Barras principle, also known as the principle of informed interpretation, as applied by the Irish courts in *MAK v. Minister for Justice and Equality* [2018] IESC 18 and in *Náisiúnta Leictreach Contraitheoir Éireann Coideachta Faoi Theorainn Ráthaíochta v. The Labour Court* [2021] IESC 36.

17. Counsel submitted that when interpreting the relevant statutory provisions, the court should also be mindful that there was a presumption at law, that the legislature did not intend to make any radical amendment to the law beyond that which it declared either in

express terms, or by clear implication in the statute; see *Minister for Industry and Commerce v. Hales* [1967] IR 50.

18. Mr. Dodd BL submitted that the case law established that when interpreting the phrase "charitable purposes" one had to have regard to the meaning which it had within the particular statute that was being reviewed. He submitted that in this case the wording was clear. The Oireachtas had intended to exclude buildings that were used as places of public religious worship. They had catered for those in para. 7. The exemption provided for in para. 16(a) was different. It provided an exemption for bodies that were "charitable organisations" as defined in s.3 of the Act, when they use the building exclusively for "charitable purposes". Counsel submitted that the latter phrase was intended by the Oireachtas to be interpreted in the way that it had been for rating purposes for more than one hundred years prior to the passing of the Act. It was submitted that there was no intention expressed in the Act, to introduce a radically new interpretation of that phrase in the 2001 Act.

19. It was submitted that if "charitable purposes" included advancement of religion, as contended for by Tearfund, then para. 7 would be otiose, because the user of such buildings would have been encompassed within para. 16(a).

20. It was submitted that the exclusion of advancement of religion from the definition of "charitable purposes", was consistent with the intention of rating law generally; that all ratepayers should bear the burden fairly and equally. Counsel submitted that it was in accordance with the general provisions and objectives of rating law, that ratepayers in one area should not have to pay more rates because they were effectively subventing the contributions that should be made by other religious bodies, with whose beliefs they may not agree, or with which they may even violently disagree: see dicta of Gibson J in the *O'Neill* case.

21. It was submitted that the interpretation urged by the Commissioner, to the effect that "charitable purposes" did not include advancement of religion, was consistent with the provisions of Art. 44 of the Constitution. It was submitted that that article acknowledged the division between religious or charitable purposes because Art. 44.5 provided as follows:-

> *"5. Every religious denomination shall have the right to manage its own affairs, own, acquire and administer property, moveable and immovable, and maintain institutions for religious or charitable purposes".*

22. Counsel referred to *McNally v. Ireland* [2009] IEHC 573, where McMenamin J, referring to the decision of Barrington J in *Corway v. Independent Newspapers (Ireland) Limited* [1999] 4 IR 484, pointed out that the provisions of Art. 44 as well as being interpreted harmoniously with the terms of that Article, may also be seen through the prism of the Art. 40.1 guarantee of equality before the law to all citizens as human persons. Counsel submitted that the interpretation proposed by the Commissioner, whereby other

ratepayers were not effectively subventing buildings used for the advancement of the religious beliefs of others, was in accordance with those principles.

23. Finally, counsel submitted that the provisions in the Act were clear, and in particular the meaning that should be ascribed to the words "charitable purposes" as used in para. 16(a); however, in the event that the court felt that the phrase was in any way ambiguous, the Commissioner relied on the decision in *Nangles Nurseries v. Commissioner of Valuation* [2008] IEHC 73, which established that in the event of any ambiguity in the interpretation of an exemption from the obligation to pay rates, an interpretation should be adopted which was against the ratepayer.

Submissions on behalf of Tearfund

24. Mr. Devlin SC accepted that from the memorandum and articles of association of the company, which had been exhibited by the Commissioner, the relief of poverty and advancement of religious beliefs were among the objects of the company.

25. Counsel submitted that the 2001 Act, made new provisions for properties that were to be exempt from the payment of rates. That was very clearly stated in the long title to the Act. He pointed out that the Act abolished s.63 of the 1838 Act. Accordingly, it was submitted that much of the earlier case law, which had involved an interpretation of that section, was no longer relevant. Those decisions had proceeded on the basis of an analysis of the wording in that Act and also the wording in the 1852 and 1854 Rating Acts. Counsel submitted that given the extent of the repeals in the 2001 Act, that case law had lost much, if not all, of its relevance. That the court can have regard to the long title when interpreting provisions in the Act, was recognised in *East Donegal Co-Op v. Attorney General* [1970] IR 317.

26. It was submitted that the general definition at law of the phrase *"charitable purposes",* was the wide definition given in *Pemsel*'s case. It was submitted that, while case law in Ireland since 1914, had adopted a restrictive approach to the definition of that phrase in s.63, which provided that "charitable purposes" did not include the advancement of religion, it was submitted that that case law was based on the wording of that section.

27. It was submitted that it was clear that the Oireachtas was making new provisions in schedule IV of the 2001 Act. It was clear that it was reverting to the wider definition of "charitable purposes" as provided in *Pemsel*'s case, which definition was generally accepted in other areas of the law.

28. Counsel pointed out that para. 16 was new, as it introduced the concept of "charitable organisation". This implied that in relation to this exception, the Oireachtas was starting from scratch.

29. It was submitted that it was clear that the 2001 Act as a whole constituted a new codification of the law of rating in Ireland: see *St. Vincent's Healthcare Group Ltd. v. Commissioner of Valuation* [2009] IEHC 113. The law was designed to overcome the somewhat disjointed and inconsistent interpretation of rating law that had existed in

Ireland prior to that time: see dicta of Egan J in *Coakley & Co. Ltd. v. Commissioner of Valuation* [1996] 2 ILRM 90. It was submitted that even within the cases that had been referred to by the Commissioner, there were inconsistencies between the various decisions, as to the rationale for the approach that had been adopted and in its reasoning for coming to the conclusion that advancement of religion was not one of the charitable purposes for rating purposes.

30. Insofar as it had been argued that para. 16 would render para. 7 otiose if the wider definition were adopted as proposed by Tearfund, it was pointed out that it was possible to have overlap between the various forms of exemption. In this regard counsel referred to the exemptions provided for in paras. 11 and 12 of the schedule.

31. It was submitted that when one looked closely at the provisions of para. 16(a), and in particular at the introduction of the new term "charitable organisation" as defined in s.3 of the Act, and when read in the ordinary and natural meaning of "charitable purposes", there was nothing therein that would indicate that "charitable purposes" should be interpreted in the restricted way contended for by the Commissioner, rather than applying the general definition of "charitable purposes" as applied in other areas of the law since *Pemsel*'s case. It was submitted that the wording was clear, that the Oireachtas had intended that "charitable purposes" in para. 16(a) should have a wide meaning. It was clear that the Oireachtas was reverting to the wide meaning of that phrase, as applied generally in the law.

32. Counsel submitted that contrary to what had been argued by the Commissioner, the Oireachtas was not thereby making a radical change in the law, but was reverting to the usual meaning of "charitable purposes" as applied in all other areas of the law. As such, the presumption against the legislature intending to make a radical change in the law, did not arise.

33. It was submitted that the long title to the Act, made it clear that the Oireachtas was making new provisions in relation to properties and their uses, that would be exempt for rating purposes. It was submitted that there was nothing in the wording of s.15, or para. 16(a) of schedule IV of the Act, to show any intention on the part of the Oireachtas to give "charitable purposes" a restricted meaning, rather than the generally accepted wide meaning of that phrase.

34. Mr. Devlin SC submitted that the fairness rationale for the restricted interpretation, as articulated by Gibson J in the *O'Neill* case, had been referred to, but had not been adopted by Kingsmill Moore J in the *Barrington Hospital* case. In the same case, O'Daly J also referred to the dicta of Gibson J, but did not endorse them.

35. Counsel accepted the dicta referred to in the *Nangles Nurseries* case, but submitted that that rule of construction did not come into play, as the wording used in para. 16(a) was clear. There was no ambiguity in the words that had been used and therefore there was no room for the application of that rule of construction. It was clear that the definition of "charitable purposes" as used in that paragraph, was applied in the wide sense, as set

down in *Pemse*l's case. Similarly, it was submitted that the Barras principle was only a weak presumption, that could be ousted by the clear meaning of the words used in the statute. It was submitted that it was of no relevance to the circumstances of this case.

36. Finally, it was submitted that the constitutional argument as put forward by the Commissioner, was not relevant to the circumstances of this case. The provisions of Art. 44 could not affect the definition of "charitable purposes" which had applied at law since *Pemsel*'s case.

Conclusions

37. The case law establishes that in interpreting the words of an Act, the court should, if possible, give the words their ordinary and natural meaning. The court can also have regard to the provisions of the Act as a whole, including its long title, when interpreting the provisions in an Act.

38. What has been referred to as the Barras principle, has been applied in Irish law. The principle was applied by the Supreme Court in *MAK v. Minister for Justice and Equality* [2018] IESC 18, where O'Donnell J stated as follows at para. 14:-

> *"The parties also accepted a suggestion by the court that a further principle may be involved, and made detailed and helpful submissions upon it. As had been argued by counsel for the respondent in Mogul (R. Keane SC), the Oireachtas is presumed to know the law and to legislate in the light of it. The re-enactment may therefore be seen as an endorsement of the interpretation given by the courts to the previous section, or at a minimum a clear intention that it should be interpreted or understood in the same way. This is known sometimes as the Barras principle, after the decision of the UK House of Lords in Barras v Aberdeen Steam Trawling and Fishing Company Ltd [1933] AC 402."*

39. The principle had been applied in the earlier case of *Clinton v. Dublin County Council* [2006] IESC 58. More recently in *Náisiúnta Leictreach Contraitheoir Éireann Coideachta Faoi Theorainn Ráthaíochta v. The Labour Court* [2021] IESC 36 Charleton J stated as follows at para. 12 and 13:-

> *"[12.] That, however, should not exclude from consideration any necessary legislative and historical background to an enactment: "Legislative intention is not a myth or fiction, but a reality founded in the very nature of legislation." See Bennion, Statutory Interpretation (London, 1984) 226; in citing these works, the most recent editions have also been consulted. What is not excluded is the necessary backdrop to legislation and what is not mandated is the reduction of interpretation to binary choices appropriate to another context. Informed interpretation recognises that if the drafters of an enactment were to explain every choice as to mischief to be addressed, as to the necessity for amendment, as to the scope of the law, as to the interaction of parts of a statute with other parts such as schedules or interpretation sections, as Bennion states at 262, the statute would of necessity "need to use far more words than is practicable in order to convey the meaning intended." Contrary*

to the view taken by the High Court, an Act of the Oireachtas is not shorn of the factual situation, including legislative matrix, which motivates its passing no more than a contract is to be construed as an arid document divorced from its necessary background. Bennion, at 263, puts the matter thus:

The informed interpretation rule requires that, in the construction of an enactment, attention should be paid to relevant aspects of the state of the law before the Act containing it was passed, of the history of the enacting of that Act, and of the legal events which occurred in relation to the Act subsequent to its passing.

[13.] More trenchantly, at article 230 of his Code, Bennion at 514 correctly posits:

The interpreter cannot judge soundly what mischief an enactment is intended to remedy unless he knows the previous state of the law, the defects found to exist in that law, and the facts that caused the legislature to pass the Act in question."

40. The court is satisfied that when interpreting words in a statute that are found to be ambiguous, it must also have regard to the presumption that the Oireachtas must be presumed not to have made a radical change in the pre-existing law, unless words are used which make it clear that the Oireachtas intended to make such a change: see *Minister for Industry and Commerce v. Hales* [1967] IR 50 and the discussion of this presumption in "Statutory Interpretation in Ireland" by David Dodd BL, at paras. 4.110 *et seq.*

41. The court is satisfied that in interpreting the 2001 Act, it is appropriate to look at the state of the law in the years immediately preceding the passing of the Act, because, as the 2001 Act is a consolidation of the law on rating, it was the pre-existing law which the Oireachtas was either repeating in the same form as before, or was changing, either wholly or partly; or the Oireachtas was introducing a wholly new concept. It is only by reference to the pre-existing law, that one can properly understand the degree of change, if any, made in the subsequent consolidating Act.

42. In this case, the court has reviewed all the authorities cited by the parties in argument. The state of the law in Ireland prior to the enactment of the 2001 Act, can fairly be summarised in the following way: In *Pemsel*'s case, MacNaughten LJ set down the classic definition of the word "charity" in the following way:

"'Charity' in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads".

43. *Pemsel*'s case, which involved the interpretation of provisions of the Income Tax Act 1842, was handed down in July 1891. In March 1892, the Court of Appeal in England in *Commissioners of Inland Revenue v. Scott* [1892] 2 QB 152, had to construe the Customs and Inland Revenue Act 1885 and in particular, an exemption which applied to "*property*

which, or the income or profits whereof, shall be legally appropriated and applied […] for any charitable purposes".

44. Herschell LJ, with whom Lindley LJ and Kay LJ agreed, held that each statute must be looked at by itself for the purpose of ascertaining its meaning and the position in which the general words are found and the nature of the specific exemptions cannot be lost sight of. In the case before him, he noted that the words that they had to construe were placed between specific exemptions, which if the words under consideration were used in their widest sense, would be sufficient to cover the other exemptions. He held that it could not be presumed that the exemptions contained in sub-s. 2 were in the present case inserted *ex majori cautela* to allay the fears of those that might be interested in any particular institutions, because the property first described was property appropriated and applied "for the benefit of the public at large". He went on to hold that those considerations satisfied him that the words "for any charitable purpose" could not have been used in the Act in the wide sense contended for by the Commissioner of Inland Revenue. Thus, the court refused to adopt the wide definition which had been given in *Pemsel*'s case and they held that the property in question was not exempt, because it could only have been said to have been applied to a charitable purpose in the technical, or wider sense of those words.

45. However, the wide definition as given in *Pemsel*'s case was applied by the Irish Courts in *O'Connell v. Commissioner of Valuation* [1906] 2 IR 479. A similar interpretation was given by the Kings Bench Division in Ireland in *Clancy v. Commissioner for Valuation* [1911] 2 IR 173, where both Palles CB and Gibson J applied the wide definition of "charitable purposes" as given in the *Pemsel* case for rating purposes. This is relevant because it will be seen that in a later case they did a *volte face* from these views.

46. Finally, in a decision handed down by the Kings Bench Division in Ireland on 4th June, 1913, in an extremely short judgment, running only to one sentence, Palles CB simply stated that they were of opinion that the case was governed by the *O'Connell* case and therefore the question posed should be answered in the negative.

47. The next significant case is *O'Neill v. Commissioner of Valuation* [1914] 2 IR 447, also known as the "*Alexandra College* case". In that case the court was considering whether Hatch Hall on Hatch Street, Dublin, which was a hostel run by the Jesuits for students attending various education facilities in the city and which also provided some education to the residents; came within the description of "charitable purposes" in s.15 of the Valuation (Ireland) Act 1852 and s.2 of the Valuation (Ireland) Amendment Act 1854. The court held that the purposes for which the building was used in that case, were not for the education of the poor and therefore were not "charitable" within the meaning of the Act. In the course of his judgment Palles CB stated as follows in relation to the opinion that he had stated in *Clancy*'s case:-

> *"I am still of opinion, as I was in Clancy's case, that these words 'charitable purposes' include purposes charitable by reason not only of poverty, but also because of the promotion of religion as mentioned in [the Poor Relief Act 1838]*

s.63; and for that reason I stated that I was of opinion that 'charitable', in this section, should be construed in the large sense, in the sense in which it is used in the Income Tax Acts. I must now modify that opinion. The decision there was right; and I abide by all I have said save as to this one point; but I regret that I used expressions which, although not part of the ratio decidendi, were more general than, after the consideration I have given this case, I can now support."

48. Gibson J also rowed back from the view that he had expressed in *Clancy*'s case. Referring to the decision in *Scott*'s case, he held that the wording in s.63 of the 1838 Act, did not support the wide definition of "charitable purposes" as given in *Pemsel*'s case. He went on to give a rationale for that conclusion which was based on the concept of the unfairness of requiring one set of ratepayers to effectively pay for the propagation of beliefs held by another set of ratepayers. He stated as follows at p.485/486.

> *"If 'charitable' as argued, covers all the extensive varieties of religious and educational teaching and propaganda to which the court gives effect – though they may seem to many mischievous, useless, or irrational: Attorney General v. Becher – the range of charitable exemption will be constantly enlarging under the movement of subjective convictions (decided by late cases to be the basis of charitable intent), and the rateable area will undergo ever-increasing diminution, to the injury of the remaining occupiers, compelled to submit to augmented contributions, and thereby indirectly to support what they may consciously object to, or even detest. The hardship is the more intolerable where rich charities are relieved at the expense of humble folk, ill-able to meet the extra charge."*

49. Without going through each of the subsequent decision, it can be said that from 1914 onwards, the courts in Ireland have consistently interpreted "charitable purposes" in rating law, as not including the advancement of religion*: McGahon & Ryan v. Commissioner of Valuation* [1934] IR 736*; Elliott and the Trustees of the Methodist Church in Ireland v. Commissioner of Valuation* [1935] IR 607.

50. In *Barrington's Hospital and City of Limerick Infirmary v. The Commissioner of Valuation* [1953] IR 299, Kingsmill Moore J carried out an extensive review of the legal authorities on rating law in Ireland, as mentioned above. He distilled from that review of the law a series of propositions, two of which are of particular relevance in this case:-

> *"(1) Apart from specific exceptions to be found in other statutes (such as Marsh's Library, Armagh Observatory and buildings belonging to certain societies instituted for purposes of science, literature or fine arts) the grounds for exemption from rates must be found in the proviso to s.63 of the Act of 1838 (McGahon and Ryan's case).*
>
> *(2) 'Charitable purposes' in s.63 has a meaning less extensive than the meaning given to those words in Pemsel's case. How much less extensive has never been decided, but at least they must be excluded from the denotation of "charitable purposes" in*

the section any charitable purpose which is mentioned expressly in the section (O'Neills case and Scott's case as applied to s.63)."

51. In *Trustees of the College of Maynooth v. The Commissioner of Valuation* [1958] IR 189, Davitt P, giving the majority judgment of the High Court came to the following conclusion:-

> *"In view of the decision in McGahon's case, as interpreted, I believe correctly, in Elliott's case, it is not now open to this Court to hold that the advancement of religion is a charitable purpose within the meaning of the proviso to s.63 of the Poor Relief Act, 1838."*

52. In 1968, Henchy J in *Rev. Mother Mary Brendan v. Commissioner of Valuation* [1969] IR 202, noted that it had been held by the Supreme Court in *McGahon*'s case, as interpreted in the *Elliott* and *Maynooth College* cases, that user for the advancement of religion is not a charitable purpose within the meaning of the proviso to s.63 of the Act of 1838.

53. Thus, for over a hundred years prior to 2001, there was a uniform interpretation of the phrase "charitable purposes" in rating law, which excluded advancement of religion from that definition. It was against that long established legal backdrop that the Oireachtas passed the 2001 Act.

54. The court is of the view that in interpreting paras. 7 and 16(a) of Sch. IV to the 2001 Act, it is to be presumed that the Oireachtas were aware of the restrictive interpretation of the phrase "charitable purposes", when used in rating legislation. It is significant that they used the same phrase in para. 16(a) of the 2001 Act.

55. Furthermore, the court accepts the submission that in general the Oireachtas is presumed not to make a radical change in the pre-existing law, unless that is done in clear and explicit terms. The court is of the view that had the Oireachtas intended to sweep away the long established definition of "charitable purposes" for rating purposes that existed at common law, they would have done so in clear and explicit terms.

56. In the past, the Oireachtas has swept away long established principles of the common law in its legislation. To give but three examples: in the area of criminal law, the presumption that children between the ages of seven and fourteen years were *doli incapax*, which presumption had existed for many centuries, was abolished in an amendment to the Children Act in 2006. In the area of civil law, s.56 of the Civil Liability Act, 1961, abolished the so called "last opportunity rule", and s.57 abolished certain defences that had been open to defendants at common law. Finally, s.2 of the Occupier's Liability Act, 1995 effectively swept away the old formulation of the duties of care owed by occupiers of land in respect of certain entrants, which had existed for many centuries at common law and substituted the common duty of care as defined in the Act. In each of these cases, the Oireachtas expressed its intention to abolish aspects of the common law in clear and explicit terms.

57. If the Act of 2001 had been intended to exempt all buildings used by charitable organisations exclusively for, *inter alia*, the advancement of religion, that would have greatly extended the exemption. It would include many premises used by charitable organisations, which might use the building for the advancement of their beliefs, which may or may not include religions of the Judeo/Christian tradition, or Islamic tradition, but would extend far wider, to include any organisation that held a belief in a supernatural being. It is hard to believe that the Oireachtas could have intended such a radical change in the law, without making that very clear.

58. As counsel for the Commissioner pointed out that, had the Oireachtas intended to do that, they could have simply stated "'charitable purposes' will include advancement of religion". Instead, they adopted the phrase "charitable purposes", which had had a settled meaning in rating law since 1914, as specifically not including the advancement of religion.

59. The court is not satisfied that the word "new" in the long title to the Act, can support the contention put forward by Tearfund. The long title of the Act is but a weak indicator as to the meaning of the words used in a statute. To import into the use of the word "new", the meaning that "charitable purposes" as used in para. 16(a) should not be held to have the meaning which it had done for over a hundred years, but would revert to a meaning given in the context of the Income Tax Acts in *Pemsel*'s case, seems to the court to be stretching the legislative effect of the word "new" too far.

60. The court is of the view that the word "new", as used in the long title in reference to exemptions from the obligation to pay rates, can be seen in schedule IV itself, which introduced a number of new classes of exempt buildings and uses, and introduced new modifications in respect of certain exemptions that had existed under s.63 of the 1838 Act. In addition, para. 16(a) introduced a new element, insofar as it introduced the concept of "charitable organisation" into that exemption.

61. The court is satisfied that applying the ordinary and natural meaning of the words "charitable purposes", as understood in rating law for over a century prior to their enactment in the 2001 Act, that phrase does not include the advancement of religion.

62. The court is satisfied that this interpretation of para. 16(a) is consistent with the overall scheme of the schedule and in particular, it fits with the exemption provided for in para. 7. It is clear that the Oireachtas wished to exempt places of public religious worship, but was not extending it further, for other activities carried on by religious organisations generally. For those that are charitable organisations, they can come within the exception, if their use of the building comes within the normal definition for rating purposes of "charitable purposes", as laid down in the common law for many years.

63. Even if the court is wrong in the construction of "charitable purposes" in para. 16(a) and if it were held that that phrase was ambiguous, then applying the approach endorsed by the Supreme Court in the *Nangles Nurseries* case, the wording must be construed against the ratepayer, as it concerns an exemption; in which case the court would also reach the conclusion that the words used do not include the advancement of religion.

64. The court is satisfied that this interpretation of the Act is consistent with the provisions of the Constitution, which guarantee the freedom to practice religion in Art. 44, but as stated by McMenamin J in *McNally v. Ireland* [2009] IEHC 573, that right has to be seen through the prism of the right to equality before the law of all citizens guaranteed by Art. 40.1: see para. 139 of the judgment. The court is satisfied that the interpretation of the Act as found herein, is consistent with the provisions of the Constitution outlined above.

65. The law of the collection of rates is an area that is *sui generis*. There is a finite body of ratepayers in any given area. If one is held exempt, an additional burden is placed on the shoulders of the remaining ratepayers. The dicta of Gibson J in *O'Neill*, as regards the fairness of requiring one ratepayer to effectively subvent the propagation of the religious ideas of others, with whom they may not agree, would be lacking in the degree of fairness that is guaranteed by Arts. 44 and 40 of the Constitution. Accordingly, the court is satisfied that its interpretation of the Act is consistent with the provisions of the Constitution.

66. For the reasons set out herein, the court would propose answering the question of law posed to it by the Valuation Tribunal in the following way: That the Valuation Tribunal was not correct in law in holding that the meaning intended by the Oireachtas to be assigned to charitable purposes in para. 16 of schedule IV of the 2001 Act included the "advancement of religion" and that the Tribunal was incorrect to find that the advancement religion is a charitable purpose for the purposes of the 2001 Act.

67. As this decision is being delivered electronically, the parties will have four weeks within which to furnish brief written submissions on the content of the final order, and on costs, and on any other matters that may arise.