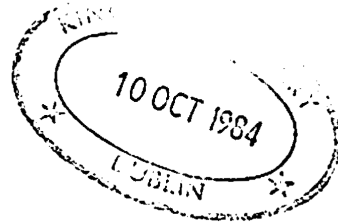
2683



THE HIGH COURT

1984 170 S.S.

IN THE MATTER OF THE VALUATION (IRELAND) ACTS 1852 to 1860

BETWEEN:-

Pfizer Chemical Corporation

Appellant

and

Commissioner of Valuation

Defendant

Judgment of Mr. Justice Costello Delivered the 31st July 1984

Rating. Case Stated. (a) Whether installations comprising 4 large tanks (known as "thickener tanks") are "machinery" within section 7 of the Rateable Property (Ir.) Act 1860 and therefore exempt from valuation. (b) Whether a large oil storage tank is "machinery" within the said section.

Pfizer Chemical Corporation own property in the Townland of Ballynacourty in the County of Waterford in which they carry on an industrial process which results in the conversion of dolomite rock into dead burned high purity magnesium oxide used in the refractory lining of furnaces and for other purposes. The process is a complex one and the Company has erected on the site a number of different types of installations to enable it to be carried out. The Commissioner of Valuation placed a total valuation of £1,800 on the Company's hereditaments according to the Valuation List as of the 1st September, 1974. The Company, being aggrieved, successfully appealed this valuation to the learned Circuit Court Judge of the South Eastern Circuit. The Commissioner for Valuation by notice dated the 16th August, 1976 expressed dissatisfaction with that decision and requested that a Case be Stated for the opinion of this Court on certain points of law. Subsequent delays have not been without benefit as since the

hearing in the Circuit Court the principal issue of law which now arises has been considered in the High Court and the Supreme Court in judgments which throw considerable light on it and which have greatly assisted me in my determination of this case.

As I have said, the processes carried on at Ballynacourty are complex ones. The dolomite rock is transported by rail from a quarry in Co. Kilkenny and then stockpiled on the site. It is then fed into a dolomite kiln where it is fired and emerges as dolomite lime. This is taken to storage bins, from thence to crushers. The crushed lime proceeds by conveyor to two small Reactor Tanks where there is a reaction with sea water which gives a precipitate of magnesium hydroxide and certain other salts. This is pumped into a very large bowl or tank called a "primary thickener" which it enters through a column in the centre of the tank. To the liquid in this thickener is added fresh sea water pumped in continuously at the rate of 10,000 gallons per minute. The magnesium hydroxide precipitates and water over flows into a perimeter dyke and the overflow

10 OCT 1994

is taken to the sea. A large rake 360 feet long which is pivoted on the central column resolves slowly in the thickener and this directs the magnesium hydroxide down to the bottom of the thickener and towards its centre. From there it is pumped to enter a second and third thickener by means of central columns as in the primary thickener. Fresh water is introduced into the Final Wash Thickener (i.e. thickener No. 4) and this is pumped back into tanks 3 and 2 where undesirable soluble salts are washed out. What is then left is relatively pure magnesium hydroxide, in the form of slurry. This slurry is in turn pumped into a filter building, and more water is removed from it. The slurry is then fed into a second Rotary Kiln called The Magnesite Kiln where it is fired and free water driven off in steam. The intense heat produces dead burned magnesium, known as magnesite.

This appeal is mainly concerned with the four receptacles known as "thickener tanks" whose construction I will describe in greater detail in a moment. It has been accepted that of the valuation of £1,800 placed by the

2687
10 OCT 1984

Commissioner on the Company's hereditaments, £1,200 refers to the four thickener tanks, £100 to an Oil Tank which is used for storage purposes, and £500 on conventional buildings, on which no controversy arises. According to the Valuation List the Company's tenement was described as "Factory and grounds. Waste"; the area was given as 39 acres and 9 perches; and the entire valuation of £1,800 was placed under the column in the Valuation List headed "Buildings". A great deal of the debate in the Circuit Court turned on whether the four thickeners and the oil storage tank could properly be regarded as "buildings" within the meaning of section 12 of the Valuation (Ireland) Act, 1852, and the learned Circuit Court Judge found, contrary to the Commissioner's contention, that they were not and he concluded that they were not therefore rateable.

The debate in this Court has taken a different course. Here the Commissioner has not argued that the thickener tanks and the oil storage tank are "buildings" within the meaning of section 12; they fall to be rated, he now says as a seperate hereditament neither as "lands" or "buildings"

but as a hereditament comprising a profit had and received out of land within the meaning of a later clause in section 12. In support of this contention he relies on the judgment of Mr. Justice Kingsmill Moore in Roadstone Ltd. .v. Commissioner of Valuation (1961) I.R. 239.

The Roadstone case was one concerned with a quarry opened up by the appellant company. Messrs Roadstone bought land which at the time of its purchase was ordinary agricultural land and then proceeded to open and work a large quarry in it. When purchased the lands were entered in the column marked "land" of the Valuation List and valued at £9. After the quarry had been opened up the valuation was changed; the land was shown as valued at £8, but in the "miscellaneous" column was entered the sum of £800 in respect of the quarry. Messrs Roadstone's claim (which was eventually considered by the Supreme Court pursuant to a consultative Case Stated) was that the quarry should be regarded as "land" and its valuation fixed by reference to the fixed agricultural price basis contained in section 11 of the 1852 Act. The Commissioner argued (and successfully

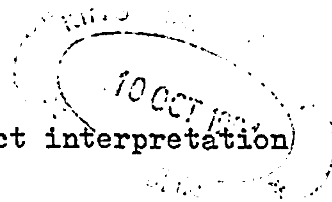
argued) that the portion of the hereditament used as a quarry should be separately valued, namely as a profit to be had and received and taken out of land. In deciding in favour of the Commissioner Mr. Justice Kingsmill Moore pointed out that generally speaking the term "land" in secion 11 of the 1852 Act (and which by that section is to be valued on the fixed price basis) can be equated with land used for agricultural or pastoral purposes, whilst "land" whose "annual value is liable to frequent alteration" (see section 4 of Valuation Act, 1854) and which accordingly must be valued on the hypothetical rent basis can be equated with land used for business, commercial or manufacturing purposes. He held that the quarry should be separately valued, but not as agricultural land under section 11 but as land whose annual value is liable to frequent alteration.

In the present case the Commissioner argues that the portion of company's hereditament which are used for the installation of the thickener tanks should be valued as a separate hereditament because it is land used for business, commercial or manufacturing purposes; that it should not be

KINGS INN LIBRARY 10 OCT 1964

valued on the fixed price basis under section 11; that it should be entered in the miscellaneous column in the Valuation Lists and valued on the hypothetical rent basis. I propose to deal with this submission first and later turn to deal with the issues arising in relation to the oil storage tank

Mr. Cooke on behalf of the company does not contest the general propositions to which I have just referred but argues that nonetheless the thickener tanks are not rateable. This is because, he says, they are "machinery" within the meaning of section 7 of the Rateable Property (Ireland) Act, 1860 and the Commissioner should have excluded them from his valuation. Both parties now accept that the learned Circuit Court Judge was correct in deciding that the thickener tanks were not "buildings" within the meaning of section 11. What I now have to decide is whether or not they can be regarded as "machinery" within the meaning of section 7 of the 1860 Act. If they are, then they are not rateable; if they are not, then they are rateable and the valuation should be fixed on the hypothetical rent basis.



As the case now turns on the correct interpretation of section 7 and its application to the facts of this case I think I should quote it in full. It reads 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 purpose of motive power."

Mr. Cooke argues that the whole of the hereditament in this case can properly be regarded as a "manufactory" within the meaning of the section. Mr. Lardner, on behalf of the Commissioner, agrees. Mr. Cooke then argues that the thickeners can properly be regarded as "machinery" within the meaning of the section and so account should not have been taken of them in fixing the valuation. Mr. Lardner disagrees; or, rather, accepts that the rotary arm in the thickener can properly be regarded as "machinery" but submits that the large bowl or tank which contains the liquids to which I have referred cannot properly be regarded as

"machinery". The issue (a mixed question of law and fact) is a net, but by no means a simple, one.

I have already explained the role which the thickener tanks play in the production process at Ballynacourty. I will now describe their construction in greater detail.

The four thickener tanks consist of saucer-shaped depressions scooped out of the ground (the scooped earth being made up into embankments) occupying approximately 20 acres of the total site area. They were constructed by stripping the top soil and scraping out the material at the centre, and earthen banks being formed at the perimeter. The sides were graded very accurately to a predetermined contour and each was designed and built to a highly accurate standard. The bottom surfaces were tarmacadamed and the inside slopes sprayed with bitumen. The large primary thickener is 400 feet in diameter with a capacity of about 11 million gallons. The three smaller thickeners have capacities from 4 million gallons to 4.2 million gallons. The depth inside the thickener is 20 feet, reducing to 12 feet at the boundary. They need hardly any maintenance.

They cannot be removed, but they could, of course, be filled in and levelled.

In considering whether not only the rotary arms but also the tanks themselves should properly be regarded as "machinery" I should briefly refer to four cases which I have found helpful in determining this issue.

In Cement Ltd. .v. Commissioner of Valuation (1960) I.R. 268 the Court was concerned with two rotary kilns in a cement factory. Each was a very large cylinder 450 long with a diameter of 12 feet; assembled in the factory and intended to be permanently there, resting on piers affixed to the realty, with support equipment, gear and motive machines. The functions of each was to turn a liquid clayey substance called "slurry" into clinkler which by a later process was pulverised into cement. The kilns were kept rotating as well as moving with an up and down action by means of machinery supplying motive power.

10 OCT 1984

A Divisional Court held that the Circuit Court Judge was wrong in holding that these kilns were rateable as "buildings". In the course of his judgment Davitt P. referred to the possibility that they could be regarded as "machinery" and had this to say (page 292);

> "The words, "machine" and "machinery" are not defined in the Valuation Acts. A dictionary defines "machine" as meaning anapparatus for the application of or modification of force to a specific purpose. In its technical sense it includes such simple appliances as the lever, pulley, and inclined plane. In its popular sense it clearly embraces a vast range of appliances among which sewing machines, typewriters, bicycles, printing presses, power-looms, spinning

"machines, and steel rolling mills readily come to mind. The word, "machinery", has to be interpreted accordingly. The ordinary concrete mixer, which one frequently sees at work in connection with road-making or building operations, seems to me typically to come within the term, "machine", as defined. It includes a metal chamber in which cement, sand, and water are placed and thoroughly mixed to become mortar by means of a rotary motion of the chamber applied through suitable gear by power produced by an internal combustion engine. It is a simple example of the application of force to a specific purpose, e.g. mixing mortar. On the other hand, an ordinary kiln in which lime is burnt or bricks are baked as clearly not a machine."

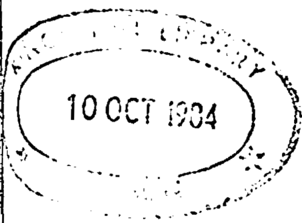
The Court was not directly concerned with deciding whether or not the kilns should be exempted but the point was adverted to by the learned President who said (at page 302) "I entertain some doubt as to whether he (i.e. the Circuit Court Judge) could reasonably come to the conclusion that they are not machinery".

In J.H. Thompson and Son Ltd. .v. The Commissioner of Valuation (1970) I.R. 264 the appellants used a travelling-hearth oven in their bakery, consisting of a large stationary component made of metal which formed a rectangular tunnel into which heat was exuded, and another component being an electrically-driven metal plate which carried dough into and through the tunnel so that it was baked before it emerged at the other end. In considering whether or not both component parts of the apparatus could

2695

be regarded as "machinery" Henchy. J. stated (p.267)

> "There is no definition of the word "machinery" in the Act of 1860, any more than there is in the Factories Acts where the word is of considerable importance. The reason presumably, is that the variety of types of machinery that one may expect to find in a factory, as well as the variation in their adaptation situation and use, renders definition well-nigh impossible. The apparatus in question may consist of a static portion and a portion consisting of, or containing moving parts; and the two portions may be severable. That is the position in the present case; the moving section is admitted to be "machinery" for the purpose of the section."


10 OCT 1984

He concluded that both components should be regarded as part of a machine, pointing out that as far as the production of bread is concerned the travelling hearth could not function without the oven, and the oven could not function without the travelling hearth. He rejected a submission that the tunnel should be regarded as part of the building rather than as part of a machine.

The next case, a Northern Ireland case, <u>United Molasses Co. Ltd. .v. Commissioner of Valuation</u> (Rating Appeals, 29th June, 1972), concerned premises used for the blending of crude molasses with water. The molasses were conveyed to three large steel cylindrical tanks and blended with water. Blending was effected by means of compressed air, which was carried by pipes situated both inside and outside the

tanks. In the course of its judgment the Tribunal stated:

> "Counsel for the Commissioner invited the tribunal to consider the various components separately and piecemeal. In the view of the tribunal this "piecemeal" approach is too narrow. The tribunal is of the view that even if each tank must be looked at individually, it should not be considered separately from but in conjunction with the electric motor, compressor and water pipes supplying it with compressed air and water. The blending process requires on the one hand the air compressor, electric motor and air and water pipes accepted by the Commissioner as "machinery" and on the other hand the tanks, in one of which the process always takes place. Each tank is so closely integrated in function with the units admitted to be "machinery" that it would be unreal to divorce the process from the means employed to produce the article for sale." (p.288)

That brings me to the more recent case in this jurisdiction. The issue in Beamish and Crawford Ltd. .v. The Commissioner of Valuation (unreported; High Court 8th May 1978; Supreme Court, 23rd July 1980) was whether certain tanks and vessels known as fermentation tanks and conditioning tanks were "machinery" and so not rateable. Both the design and function of these vessels were, in the opinion of the Supreme Court, relevant for the determination of that issue. The ratepayer was engaged in the process of brewing and it appeared that a mixture of wort (an extract of malt boiled with hops) and yeast were put into fermentation vessels, each of which was fitted with insulating jackets and with pipes attached to other vessels and to pumps. Fermentation

took place inside the fermentation vessels naturally, but temperature control was achieved by pumping chilled alcohol through the insulating jackets. In addition the contents of the vessels were agitated by passing carbon dioxide through the piping attached to the vessels. On the conclusion of this first stage the contents of each fermentation vessel were pumped into a conditioning vessel where it was kept under pressure and cool. In these vessels the contents were clarified, stablised and its gas content adjusted. Then the liquid was filtered and blended by pumping the contents of one conditioning tank through a filter and finally to a storing vessel from which the liquid was finally bottled. As pointed out in the judgment of the Chief Justice "the entire process necessitates both the FVs (i.e. fermenting vessels) and the CVs (i.e. conditioning vessels) being connected by pipes and the whole interconnected system being controlled and actuated by pumps operating through pipes which not only move the contents when the process so requires but also achieve temperature control".

10 OCT 1984
DUBLIN

Having considered the judgments in Cement, Thompson, and

United Molasses to which I have just referred the Chief Justice (delivering the judgment of the Court) drew the following conclusions:

> "These decisions and others which were cited to the learned President of the High Court seem to indicate a fairly general judicial view that the word "machine" within the section connotes apparatus by means of which force is applied, modified or used, by mechanical means for a specific purpose, whether such apparatus is moving or fixed, and that in determining whether the apparatus so qualifies as a machine or machinery the components should not merely be regarded separately or piecemeal but as intergral parts of the process in which they are used."

Applying this test to the vessels in the case, the Chief Justice pointed out that the vessels were each part of the continuous process of brewing, that throughout the process the original mixture was subject to control and movement at the instance of the brewer, that the process required the use of force at each stage by mechanical means for the achievement of a specific purpose, namely the brewing of beer; and that this was sufficient to bring each of the vessels used in the process within the general term "machinery" and to make each of the vessels a "machine" (pages 8 and 9).

In the light of these decisions and judgments I must conclude that if the processes now being carried on in the thickener tanks at Ballynacourty had been carried on in large

10 OCT 1991

steel overground tanks rather than in installations constructed in the ground as I have earlier described there could be no argument in this case - clearly both the steel tanks and the rotating arms should be regarded as "machinery" within the meaning of section 7. Force would be applied in them by mechanical means to obtain a specific purpose, and the two principal components of the entire apparatus, namely the rotating arm and the steel container, should not properly be treated as separate and distinct units, one of which would be a rateable hereditament and the other not. To do so would be to undertake an entirely unreal exercise, for both the tank itself and the rotating arm would be required to produce magnesium hydroxide in the form of slurry. Let me take the argument further and assume that instead of using steel tanks above ground Messrs Pfizer sunk them into the ground. Would they then be rateable? If that was the production process it seems to me that whether above or below ground the tanks should be treated the same way and excluded from valuation. Should there be a different conclusion if instead of using steel tanks Pfizer contructed, as they did in this case,

large vessel to contain and agitate the mixture of water and magnesium hydroxide by scooping out the earth, grading the sides of the resulting excavation to predetermined standards, and forming imperiable sides and base by spraying the sides with bitumen and tarmacading the base? I do not think so. The container or tank or vessel (I do not think it matters very much what name is applied to the finished installation) is just as necessary for the production process as if it were of steel construction and should not as a matter of law be treated as a component separate from the revolving arm. I must conclude therefore that all the components, static as well as moving, of these thickener tanks are "machinery" within the meaning of the section and accordingly exempt from valuation.

I turn now to the oil storage tank. This tank plays no role in the actual process of producing magnesium oxide from dolomite rock. It is unheated and unlagged and used for storing oil. It is 60 feet high, 60 feet in diameter and was manufactured on the site. It is agreed it is not a "building" within the meaning of section 12 of the 1852 Act. I am quite satisfied that it cannot be regarded as

"machinery" within the meaning of section 7 of the 1860 Act. If it is rateable as a separate hereditament being a commercial use of land, no exemption can be granted to it such as is conferred by the section on the thickener tanks.

I have not discussed with counsel the exact form in which I should answer the two questions raised in the Case Stated. Subject to their submissions it seems to me that I should answer them by stating that the learned trial Judge was correct in holding that the four thickeners and the oil storage tank were not "buildings" within the meaning of section 12 of the 1852 Act; that he was correct in concluding that the four thickener tanks were not rateable on the ground that they were excluded by section 7 of the 1860 Act; that he was incorrect in holding that the oil storage tank was not rateable and that it should be included in the miscellaneous column in the Valuation List.

10 OCT 1984

Approved
8-8-84