

Appeal No. VA88/0/100

**AN BINSE LUACHÁLA**  
**VALUATION TRIBUNAL**  
**AN tACHT LUACHÁLA, 1988**  
**VALUATION ACT, 1988**

**St. Macartan's Diocesan Trust**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: St. Patrick's Agricultural College, Co. Monaghan

**B E F O R E**

**Hugh J O'Flaherty**

**S.C. Chairman**

**Paul Butler**

**Barrister**

**Mary Devins**

**Solicitor**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 18TH DAY OF NOVEMBER, 1988**

By Notice of Appeal dated 18th August 1988 the appellants appealed against the decision of the respondent refusing them exemption from rates on the grounds of the public user and charitable user of the hereditaments in question. The appellants claim that the property was used for public and charitable purposes and, accordingly, that it is exempted by virtue of the Poor Relief (Ireland) Act 1838 or alternatively the Valuation (Ireland) Act 1852 Section 16 and the Valuation (Ireland) Act 1854, Section 2.

Messrs McEntee & O'Doherty, solicitors, of 20 North Road, Monaghan presented written submissions on the 18th day of August 1988. This submission was accompanied by the following documents -

- (a) Copy Rate Demand dealing with the subject matter of the appeal which relate to the townland of Drumgoask, Land Valuation £77. Building £76.
- (b) Copy Notice of Decision of Commissioner of valuation dated 27th July, 1988.
- (c) Copy memorandum and articles of association of St. Macartan's Diocesan Trust.
- (d) Copy agreement 6th December 1944 - Most Rev. Eugene O'Callaghan & Others with the Minister for Agriculture.
- (e) Copy agreement dated 4th March 1949 - Most Rev. Eugene O'Callaghan & Others with the Minister for Agriculture.
- (f) Copy order of Circuit Court Western Circuit, County of Galway, Record No. 515/177. Rev. Brother Anthony Dolan (on behalf of the Congregation of Franciscan Brothers) v. Commissioner for Valuation.
- (g) Copy correspondence with Commissioners of Valuation and Monaghan County Council.
- (h) Copy accounts, St. Patrick's Agricultural College 1980 to September 1987.

Mr Patrick McMorow B.Agric. Sc. who is a valuer with 7 years experience in the Valuation Office presented a written submission dated 7th October 1988.

The valuation history of the hereditaments in question is as follows:

Prior to 1967 the premises was described as "house, offs, gate lodge, gardener's house and land" with R.V. £76.00 on buildings and £77.00 on land - total R.V. £152.00. Following a request for revision in 1967 to "value broiler houses etc. - fowl houses" the description was amended to "house, offs, gate lodge, poultry houses, gardener's house and land" and the buildings R.V. was increased to £115.00. On ensuing First Appeal the description was further amended to "Agricultural College, offs. and land" and the buildings R.V. was reduced to £76.00 and has not since been altered.

On annual revision in 1981 and 1982 the premises was again listed for revision - "Seeking Exemption". No change was made and these decisions were not appealed.

It was again listed for revision in 1987 as follows "Revise - request to remove rateable valuation..." and no change was made.

The basis of appeal then was "That the premises are premises used for public purposes and as such are exempt from rates".

There was no appeal made against quantum.

The single question for determination in this appeal, therefore, is whether the hereditaments are exempt or not.

The oral hearing took place on the 21st October 1988 when Mr Patrick O'Doherty of McEntee & O'Doherty represented the appellants and when the evidence of Rev. Thomas Finnegan, Rector at the College, as well as Mr Bernard O'Neill who is in charge of teaching at the College, was heard.

Mr. Aindrias O'Caoimh, Barrister, instructed by the Chief State Solicitor, represented the Respondent and Mr. McMorrow was also in attendance at the hearing.

The following matters were established to the satisfaction of the Tribunal:-

1. The property under appeal is the subject matter of Folio 881 (Revised) Co. Monaghan of which the registered owners are stated to be Most Rev. Eugene O'Callaghan, the Right Reverend Patrick Monsignor McKeown, the Very Reverend Hugh Canon Finnegan and the Reverend Seamus Morris who held same for the Diocese of Clogher and who were registered as owners on 10th November 1983.
2. St Macartan's Diocesan Trust was incorporated on 20th March 1944 inter alia to take over from the existing owners of St. Patrick's College the lands and so forth connected with these and various buildings owned by or held under charitable users or trusts connected with the Diocese of Clogher. It appears that the formalities of vesting the property formally in St. Macartan's Diocesan Trust is in the course of being carried out at the direction of the present Bishop of Clogher, Most Reverend Joseph Duffy.
3. In or about the year 1941/42 the then Bishop of Clogher, Dr. McKenna,

decided that the diocese should provide a college for boys who were interested in agriculture and who for various reasons were not interested in attending the diocesan secondary college, St. Macartan's Seminary to pursue a more academic course. At the start, St. Patrick's was run in conjunction with St. Macartan's Seminary. The moneys used to set up St. Patrick's were provided by the Diocese of Clogher and collections were taken up in the churches of the diocese to fund the enterprise.

The aims of the college were to improve agricultural conditions:

- (a) To increase productivity of the soil by means of scientific and up to date methods in agriculture, dairying and horticulture.
- (b) By the introduction of remunerative side-lines such as fruit-growing, bee-keeping and home-crafts.

It was also "to give as large a number as possible of the more capable and intelligent boys from the rural districts a more advanced religious and cultural education; to inculcate a proper pride in their profession; to imbue them with a spirit of self-respect and self-reliance, and, in short, to fit them for the position of leaders in Catholic thought and action in the rural communities, "according to a prospectus of the time.

4. By an agreement dated 6th December 1944, between the Most Reverend Eugene O'Callaghan and others of the one part (referred to as "the proprietors") and the Minister for Agriculture of the other part it was agreed that the proprietors should provide and equip as soon as might be to the satisfaction of the Minister a science laboratory and workshop for manual training at the college. The proprietors agreed to carry on at the college a school for agriculture for boys in accordance with the programme of agricultural education for the time being approved of by the Minister. The programme set out what should be done. The proprietors agreed that during the currency of the agreement no religious test would be applied in the selection of admission of pupils to the college.
5. There was a further agreement entered into between the proprietors

and the Minister on 4th March 1949.

6. Ever since the college has been used as an agricultural college and it is truly non-denominational in its acceptance of students.
7. ACOT (now Teagasc) pay the salaries of four teachers, three technicians, one matron, one secretary and one maintenance man and the college itself pays the salaries of four farm labourers, four kitchen staff and Reverend Thomas Finnegan, the rector of the college. In addition, a capital grant is paid by the Department of Agriculture.
8. At present there are 49 students in the college. The number of students per annum varies from 45 to 55. Those students who live-in pay £1250 per annum and those who do not live-in pay £1150 per annum which is to cover their meals and towards educational trips. (If any student wished to supply his own meals, he would not be charged.) The Tribunal is satisfied that the money paid goes to support the students and that there is no "profit" made by the Trust.
9. The Tribunal is satisfied that the St Macartan's Diocesan Trust is a charitable organisation for the Diocese of Clogher. It was set up for the purpose of affording free education in agriculture and horticulture to boys who might not be interested in purely academic subjects provided in the sister college, St. Macartan's.
10. The college is open to all irrespective of class or creed and with no geographic boundaries.

The Tribunal is presented with the question whether the hereditaments are entitled to be exempt from rates.

The Tribunal is in no doubt that if it had to decide the case on the basis that this was a trust for advancement of education and, therefore, a charity within the principles enunciated in the famous case of Commissioners for Special Purposes of Income Tax v. Pemsel (1891) A.C. 531 or on the basis that this is a form of charity which consists of giving to the deserving, which is

justice (Cf. per Mr Justice Walsh in McGee v. Attorney General (1974) I.R. 284 at 319) its task would have been an easy one in deciding that the premises should be declared exempt.

However, the matter cannot be resolved so simply as was demonstrated by the extensive legal arguments presented by both sides in the course of the oral hearing.

The Tribunal is required to review the various statutes which govern this matter.

The Valuation (Ireland) Act 1854 Section 2 provides that in making out the lists or tables of valuation mentioned in the Valuation (Ireland) Act 1852, the Commissioner of Valuation shall distinguish all hereditaments and tenements or portions of the same of a public nature or used for charitable purposes or for the purposes of science, literature and the fine arts as specified in 5 and 6 Vict., c. 36, and that all such hereditaments or tenements or portions of the same, so distinguished, shall as long as they shall continue to be of a public nature and occupied for the public service or used for the purposes of the aforesaid, be deemed exempt from all assessment for the relief of the destitute poor in Ireland and for grand jury and county rates.

The grounds for exemption from rates (as the Supreme Court has held in the cases of McGahon and Ryan v. Commissioner of Valuation (1934) I.R. 76 and Barrington's Hospital v. Commissioner of Valuation (1957) I.R. 299 are to be found in the proviso to S. 63 of the Poor Relief (Ireland) Act 1838 -

'Provided also, that no church, chapel, or other building exclusively dedicated to religious worship, or exclusively used for the education of the poor, nor any burial ground or cemetery, nor infirmary, hospital, or charity school or other building exclusively used for charitable purposes, nor any building, land, or hereditament dedicated to or used for public purposes, shall be rateable, except where any private profit or use shall be directly derived therefrom in which case the person deriving such profit or use shall be liable to be rated as an occupier according to the annual value of such profit or use.'

As Mr Justice O Dalaigh (as he then was) pointed out in the Barrington's Hospital case (at p. 340) the proviso is divided into four categories by the use of the conjunction, 'nor'.

Aside from that proviso to that section of that Act, if one were to rely on Section 2 of the Valuation (Ireland) Act 1854, the Tribunal would not doubt that the hereditaments in question should be regarded as 'of public nature or used for charitable purposes'.

Mr O'Doherty submitted that the college was one for the education of the poor in the sense that nowadays there is no such thing as education for the poor as such and that most are 'poor' in the sense that they do not belong to the better off strata of society which would be required to pay fees. But he, perhaps, placed greater stress on the final category and he relied on the decision of Judge Esmonde in the Franciscan College case that the premises were used for public purposes.

The decision of the Supreme Court in the Barrington's Hospital case seems to the Tribunal to establish conclusively that in regard to education it must be read as limited to education of the poor and the poor exclusively.

Mr Justice Kingsmill-Moore said that the following propositions would appear to be warranted by the Irish authorities on the wording of the proviso to S. 63

"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, of fine arts) the grounds for exemption from rates must be found in the proviso to s. 63 of the Act of 1838 (McGahan and Ryan's Case (2)).

2, "Charitable purposes" in s. 63 has a meaning less extensive than the meaning given to those words in Pemsel's Case (3). How much less extensive has never been decided, but at least there must be excluded from the denotation of "charitable purposes" in the section of any charitable purpose which is mentioned expressly in the section (O'Neill's Case (4) and Scott's Case (5) as applied to s. 63).

3, Neither the wording of s. 63 nor any authority leads to the conclusion that "charitable purposes" means, or is confined to, "charitable purposes devoted exclusively to the benefit of the poor."

4, The word "exclusively," in no way alters or modifies the meaning of "charitable purpose." It does ensure that, in order to qualify for exemption,

a building must be used for charitable purposes only. Where a building is used for mixed purposes, some charitable, some non-charitable, it is not exempt, though if the purposes are carried on in different buildings or in different parts of the same building s. 2 of the Valuation Act, 1854, gives power to the Commissioner to distinguish as exempt the buildings or portions of buildings which are exclusively used for charitable purposes. (O'Connell's Case (1), Clancy's Case (2), case of the Good Shepherd Nuns (3)).

- (1) 49 I.L.T.R. 103. (3) [1891] A.C. 531.  
 (2) [1934] I.R. 736. (4) [1914] 2 I.R. 447.  
 (5) [1892] 2 Q.B. 152.

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 1953*

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5. Although, where a building is used for education, in order to secure exemption, it must, on the express wording of s. 63, be used "exclusively for the education of the poor," yet, even in the case of educational charities, the receipt of fees or income is not necessarily a bar to exemption if the fees are incidental to such user (Gibson J. in *O'Neill's Case* (4).) When the fees or income are subject to a trust which requires them to be applied for the charitable purpose their receipt does not make the user any the less "exclusively for charitable purposes." (Suggested by Palles C.B. in the *Waterford Case* (5) adopted by all members of the Court in the *Pembroke Case* (6) and two members of the Court in *University College, Cork Case* (7) and further endorsed by Palles C.B. in *Clancy's Case* (8).)

6, By parity of reasoning, even if the section required hospitals to be used exclusively for the treatment of the poor, the receipt of fees would not be a bar to exemption if such fees were subject to a trust to be applied to the use of the hospital and such hospital predominantly treated poor patients. As there is no such limitation to the treatment of poor patients in the section, the charging



of fees in a hospital, where by the nature of the trust such fees must be applied to the use of the hospital, cannot affect the right to exemption.

7, Neither schools (*O'Neill's Case* (4)) nor hospitals (*Royal Victoria Hospital Case* (9)) are used for charitable purposes if they are carried on exclusively, or predominantly, for the well-to-do.

8, The payment of masters or doctors to carry-on the charitable work does not prevent the building in which the work is carried on from being used exclusively for charitable purposes.

And as Mr Justice O'Dalaigh said:-

'I accept that the charitable purposes referred to in s. 63 should in regard to education be read as limited to the education of the poor.'

The Appellants next placed reliance on the Pembroke Schools case (1904) 2 I.R. 429 and the University College Cork case (1911) 2 I.R. 593.

The Tribunal would wish to reproduce Davitt, P. 's analysis of these cases outlined in Maynooth College v. Commissioner of Valuation (1958 I.R. 189 at pp. 200 - 203 –

In the *Pembroke*

*Case*(1) the premises in question were the Ballsbridge branch of the Pembroke Technical School, which was established under the provisions of the Technical Instruction Acts, 1889 - 1891. The Queen's Bench Division held, on a case stated by the Recorder of Dublin, that the premises were entitled to be distinguished as being used for public purposes. O'Brien L.C.J. said that, in deciding the question at issue, they had to have regard to the origin and object of the institution, the means by which it was maintained, and its use. After an examination of the facts he concluded that:- (1) the fabric of the institution was constructed by means of public moneys in order that it might be a school for technical instruction; (2) the school was maintained by public money raised as a tax under Statute and supplemented by money provided by parliamentary grants; (3) the occupiers were the Committee of Management who had no beneficial interest whatever in the premises and derived no private profit from the school; (4) the Schools, of which this was a branch, were open to all comers without limitation of class, locality, or creed; (5) that in obedience to statutable injunction no crafts were taught; (6) that the

teachers were paid exclusively out of public moneys; (7) that the character of the subjects taught, as a whole, indicated a great public purpose. He distinguished the case, in relation to a fee of 2/6 per head paid by each pupil, from the case of the *Waterford Union v. Barton* (4) by pointing out that the proceeds of this charge were subject to a clear obligatory trust to apply them for the benefit of the school. He said that he was satisfied that regarding its origin and objects, the manner of its maintenance, and its use, it was an institution altogether of a public nature and used exclusively for public purposes. Andrews J. concurred basing his opinion upon the circumstances that the school was open to all comers; that the instruction was of a public nature. that the occupiers had no beneficial interest and derived no private profit from the school; and that the fee of 2/6 a head could be applied only to the purposes of the school. Gibson J. concurred and based his opinion on similar grounds.

- (1) [1904] 2 I.R. 429 (3) [1919] 2 I.R. 493  
 (2) [1911] 2 I.R. 593 (4) [1896] 2 I.R. 533

In the *University College, Cork Case*(1) the King's Bench Division was unanimous in considering that the College was exempt as being used for public purposes; though divided on the question whether it was used exclusively for charitable purposes. Madden J. was of opinion that the considerations which led the Court to decide that the Pembroke School was occupied and used for public purposes were generally applicable to the College; but that there was in addition an element of supreme importance in the circumstances that under the provisions of the Universities Act of 1908 the accounts of the College, as well of the University of which it was a constituent were subject to audit by the Controller and Auditor General, and were required to be laid periodically before the House of Commons. The similarity to the *Pembroke Case*(2) is apparent in the circumstances that (1) the College, as Queen's College, Cork, was originally built with public moneys; (2) that it was maintained by means of a parliamentary grant and fees paid by students; (3) that the fees had to be devoted to the purposes of the College, (4) that the College was established under statute for purposes of great public utility; (5) that it was open to all comers without distinction of creed, class or sex; (6) that the public, by elected representatives, were admitted to a share in the government of the College. Madden J. was of opinion that it was impossible to lay down any general rule applicable to educational institutions; and that to state, as a general proposition, that an institution established for the promotion of such purposes of great public utility as University education, and the prosecution of literary and scientific research, even if supported in part by public moneys, was entitled to exemption from rateability, would be to adopt

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a principle which would have far-reaching consequences. It would appear that, for him, the determining factor was the requirement that the accounts of the College should be subject to audit by the Accountant and Auditor General, and laid before the House of Commons. He said that this was a recognition by the Legislature that the College funds must be applied exclusively to public purposes; and placed the College in the position of a State institution. Kenny J. preferred to base his decision on the view that the College was used exclusively for charitable purposes. Wright J. based his opinion that the college was used for public purposes on grounds similar to those which appealed to Madden J. The decision of the King's Bench Division was affirmed on appeal by the Court of Appeal, and, it would seem,  
 (1) [1911] 2 I.R. 593      (2) [1904] 2 I.R. 420

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mainly upon the same grounds. Barry L.C. was impressed by the provisions of the Universities Act s.2 sub-s. 4 relating to "recognised colleges," and those of s. 10 relating to Intermediate Education Board and County Council Scholarships. He rejected the argument that the expression "public purposes" in the proviso to s. 63 of the 1838 Act should be read as being *ejusdem generis* with purposes mentioned earlier in the section and plainly referable to the benefiting of the poorer classes.

Lastly in the *Trinity College Case*(1) the King's Bench Division distinguished the case from that of University College, Cork, and held that the Dublin College was not entitled to exemption as being used for public purposes. It was emphasised that it was endowed with large funds for educational purposes and was self-governing as to income, staff, and teaching; that in matters of general administration it was independent and free from all government or other outside control; that its finances were in no way subject to parliamentary control; that no person had any legal right to become a student; and that the income derived from students' fees was not devoted exclusively to the benefit of the College, but was, as to portion, divisible among the fellows, professors, and lecturers. Kenny J. summarised the effect of the cases which I have been reviewing in the following passage on pp. 519

"It is sufficient for me to say with reference to the questions of law submitted in the 'Case Stated,' that in all the Irish authorities where the question of the meaning and application of the words 'used for public purposes,' or 'altogether of a public nature,' or 'used exclusively for public purposes,' has arisen, it has been uniformly determined that the 'user,' essential in order to establish exemption, must be available for all the subjects of the realm; the 'purposes' must be purposes in which every member of the community has an interest; and the premises must be used for the public benefit of the whole community, and not for the private or exclusive use of any members, or any particular class or section of it. In that sense exemption was upheld in the *Derry Bridge Case* (2), and the *Belfast Harbour Case* (3), the *Sligo Harbour Case* (4), and the *Pembroke Commissioners Case* (5). The *Cork College Case* (6) is to the like effect; but it is plain from the judgments both in the King's Bench and the Court of Appeal that

- (1) [1919] 2 I.R. 493 (2) I.R. 2 C.L. 577  
(3) [1897] 2 I.R. 516, 534  
(4) [1899] 2 I.R. 214 (5) [1904] 2 I.R. 429  
(6) [1911] 2 I.R. 593; on appeal, [1912] 328

the circumstances that Crown and parliamentary control over the affairs of the College was contemplated by the statutes and charter under which it was established was an important factor in the case, and helped to bring it closer in principle to the operative grounds of the decision in the *Mersey Docks* Case (1)"

It should be noted that in this summary of the Irish authorities Kenny J. is not entirely accurate. He appears to have proceeded upon the assumption, and he is not alone in doing so, that in the *Derry Bridge Case* (2) the bridge itself constituted the premises whose dedication and user were in question. This however is not so. The hereditaments in question were the tolls and the toll-houses, and there is no ground for thinking that *their* user was available for all subjects of the realm. What was decided was that those hereditaments were dedicated to and used by the Commissioners solely for the public purpose of establishing and maintaining a public highway. It is clear, however, that in all the other cases

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summarised the user of the premises in question was available, in the legal sense, to all subjects of the realm.

In my opinion it cannot be successfully maintained that Maynooth College comes within the principle of exemption applied in these later cases. The College was originally established and maintained by means of public moneys, and its main endowment has the same origin; but it has for nearly a century been completely self-governing as to income, staff, and teaching; it is independent in matters of general administration and free from all government or other external control; its finances are in no way subject to government audit or parliamentary control; no person has any right to become a student, and admission as such is quadruply restricted to students: of the male sex; who profess the Catholic faith; who intend to study for the priesthood; and who have the required episcopal nomination. Its lectures are not open to the public, and the public are in no way represented upon its governing body. Very few indeed of the characteristics which secured exemption for the Pembroke Technical School and University College, Cork, are present in the case of Maynooth; while, misfortune making strange bed-fellows, it would appear to share in almost all the disadvantages which defeated Trinity College's bid for exemption.

(1) 11 N.L.C. 443

(2) I.R. 2 C.L. 577

It appears that the result of the "intense judicial discussion on ... a much litigated section" is that property is "used for public purposes" where, and only where -

- (i) It belongs to the government; or
- (ii) Each member (emphasis added) of the public has an interest in the property.

Cf. Mr Justice Keane's "The Law of Local Government in Ireland", at p.297. And see Kerry County Council V. Commissioner of Valuation (1934) I.R. 527. Here, despite the significant public benefit that is undoubtedly provided, the property is private rather than public and the diocesan trust, despite the considerable subventions it receives from the State, is in control of how the property is used.

The Tribunal is in no doubt that the situation of these premises provides an anomaly because secondary schools are now given a measure of relief by the Local Government (Financial Provisions) Act 1978 and the other unfortunate thing is that the proviso to S. 63 of the 1838 Act, governs s. 2 of the 1854 Act.

In all the circumstances, the Tribunal has reluctantly come to the conclusion that it must affirm the Respondent's decision in this matter.

**Decisions relied upon by Appellant:**

Pembroke Schools case (1904) 2 I.R. 429

University College Cork case (1911) 2 I.R. 593

Decision of His Honour Justice Esmonde in

Franciscan College case March 1978

**Decisions relied upon by Respondent:**

Barringtons Hospital case (1957) I.R. 299

Maynooth College case (1958) I.R. 189

Trinity College case (1919) 2 I.R. 493

Wesley College case [CF. 9 December, 1982: unreported]