

Appeal No. VA88/0/364

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

**Henkel Limited**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Map Reference Lot No. Co. Cork

**B E F O R E**

**Hugh J O'Flaherty**

**S.C. Chairman**

**Paul Butler**

**Barrister**

**Brian O'Farrell**

**Valuer**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 1ST DAY OF MAY, 1989**

By notice of appeal dated the 26th day of August 1988, the appellants appealed against the rateable valuation of £1,200 on the above mentioned hereditaments on the following grounds:-

1. That the valuation is excessive and inequitable and bad in law.
2. That the rateable valuation is bad in law, in that rateable valuations have been allotted to, or attributed to, items which are not rateable hereditaments or alternatively, in arriving at the net annual value, the Commissioner of Valuation has erred in law in

including therein the value or values of items which are not rateable hereditaments.

3. That the Commissioner of Valuation has erred in law in including in the valuation or assigning an annual value or rateable valuation to non-rateable plant and machinery.

By notice of motion dated the 24th March 1989, the respondent sought a determination by way of preliminary issue of the validity of the appeals brought herein and stated that he would rely on the following matters in support of his contention that the said appeals are invalid.

1. The appellants did not appeal the valuation fixed by the Commissioner to the Commissioner of Valuation by way of first appeal
2. The first appeal lodged by or on behalf of Cork County Council was withdrawn and as a result no determination fell to be made on first appeal and no determination was made by the Commissioner on first appeal.
3. The above named appellants have failed to have regard to the provisions of the Valuation Acts and in particular section 19 and 22 of the Valuation (Ireland) Act, 1852.

The Tribunal met on the 24th April, 1989, to deal with the Notice of Motion.

Mr Aindrias O Caoimh (instructed by the Chief State Solicitor) appeared for the respondent.

Mr Daniel Herbert, Barrister (instructed by Mr Kevin Barry, solicitor of the firm of Kennedy & McGonagle, solicitors) appeared for the appellants.

Mr O Caoimh stated that the sequence of events was as follows:-

26 November, 1987, first appeal lodged by Cork County Council for the Commissioner's determination.

26 February, 1988, that appeal was withdrawn.

3 June, 1988, the then Commissioner, Mr Barrett, dealt with various matters which were before him but in relation to the instant cases he dealt with them as follows:

"Nos 10 & 14 not dealt with  
- withdrawn"

It should be noted that the appellants never appealed. If Cork County Council had persisted in their appeal and had not withdrawn it and the matter had proceeded in the ordinary way and there had been a "decision" in the usual sense then, clearly -and it is agreed by both parties - the appellants could have appealed to this Tribunal.

However, the point now is, it is asserted, that since Cork County Council withdrew their appeal there is no vehicle by which the appellants can come to this Tribunal.

Mr Daniel Herbert said that he had two essential submissions to make:-

- (1) that one was concerned with a concise statutory matter. There was no power of withdrawal of an appeal.
- (2) the Commissioner has no entitlement not to make a determination; he must make a decision. He pointed out that there was a purported determination called "appeal

withdrawn". Therefore there is a finding in respect of which appellants could come in under section 3 of the Valuation Act, 1988.

He said that the Tribunal had to deal with a technical statute which places an obligation on individuals to carry through their duties. He referred to the Queen v. Great Southern Railways (1901) 1 I.R. 215 and quoted from the judgments of Chief Baron Palles at p. 222 and Lord Justice Holmes at p. 229.

Mr Herbert contended that the Commissioner could not say: "I'm doing nothing".

He said that is a decision; it may be an invalid decision. There was a decision on first appeal. He did exercise his mind on it.

Mr Herbert said he was at some disadvantage because he did not know what had taken place between the appeal being lodged and the withdrawal of it.

At this stage, Mr Dineen, a valuer in the Valuation Office, gave assistance to the Tribunal and said that he had been appointed by the Commissioner to report on the premises; that he did not in fact inspect the premises (though he was familiar with them from a previous year) but that he had met officials of Cork County Council and had thought they would be wise to withdraw the appeal and with this opinion the County Council officials appeared to agree because they felt that the valuation was advantageous to them.

Mr Killen of the firm Donal O'Buachalla & Co. Ltd. pointed out that the appellants did not put in their own notice of appeal because when they realised that Cork County Council had appealed they did not think that there was any need for the appellants to appeal and had not anticipated, obviously, the possibility that the appeal by Cork County Council might be withdrawn.

Mr Aindrias O Caoimh in reply said that section 21 did not come into play. The plain fact was that the Commissioner had not made a decision and that the correct order for this Tribunal was to strike out the appeal because it had no jurisdiction to entertain it.

### **Findings**

Section 20 of the Valuation (Ireland) Act, 1852 provides as follows:-

The said Commissioner of Valuation shall, on receipt of every such Notice as aforesaid, Notice of person aggrieved under S. 19. inquire into the Subject Matter thereof, and, if necessary, direct a Valuator or Surveyor, as the Case may require, who shall not have been previously employed in making the original Valuation contained in the Lists as aforesaid, to view such Hereditament or Tenement, and investigate the Complaint stated in such Notice, and report thereon to the said Commissioner of Valuation from such Report that the Valuation or Statement of the Area of the Tenement or rateable Hereditament referred to in any of such Notices requires Amendment, the Commissioner of Valuation shall have Power to alter and amend the Valuation or Statement of the Area of the Tenement or rateable Hereditament so appealed against, and also to alter and amend the Valuation or Statement of the Area of any other Tenement or Hereditament against which there shall have been no Appeal, but which may appear to him to be similarly circumstanced with those respecting which Appeals have been made, in order to render the Valuation of every Tenement or Hereditament comprised in such List proportionate and uniform.

It seems to the Tribunal that any court or tribunal can only act insofar as its jurisdiction is invoked. Here the Commissioner's jurisdiction was invoked but, at a certain stage, it was

withdrawn. That seems to the Tribunal to be a fundamental right of any litigant or potential litigant. Here the appellants suffered a prejudice without any doubt, because they were relying on the fact that Cork County Council had put in an appeal and if a determination had been made on foot of that appeal then they (appellants) could themselves have brought an appeal to this Tribunal.

However the Tribunal is of the opinion that it is as clear as anything could be that whatever else the Commissioner did he did not make a "determination". If corroboration for this was required, aside from the documents in the case, it is afforded by the fact that while Mr Dineen, the valuer, had been appointed to carry out a survey and report to the Commissioner, he did not do so. The Tribunal was informed that invariably in the case of appeals to the Commissioner someone from his office is appointed to carry out a survey and to report to him. This was not done in this case.

Nonetheless, the appellants invite the Tribunal to hold that there was a determination of sorts in the sense that what had been there stood.

The Tribunal is unable to accept this contention.

The Tribunal is, therefore, constrained to hold that the present appeal is not validly before it and the correct order for it to make is to strike out the appeal on the grounds that the Tribunal has no jurisdiction to entertain it.

The following documents are attached by way of appendix to this judgment:

1. Appeal received from Cork County Council dated 26th November, 1987.
2. Letter dated 26th February, 1988 from Cork County Council withdrawing their appeal.

3. Document entitled first appeal decisions signed by T J Barrett, Commissioner of Valuation dated 3 June 1988.