

Appeal No. VA95/5/010,
VA95/5/011, VA95/5/012,
VA95/5/013 & VA95/5/014

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

University of Limerick

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Museum at Map Ref: In 2a, Townland: Srelane, ED: Ballysimon, RD: Limerick 1,
(2) Conference Centre at Map Ref: In 2d, Townland: Srelane, ED: Ballysimon,
RD: Limerick 1,
(3) College University at Map Ref: On 2c, Townland: Dromroe, ED: Ballysimon,
RD: Limerick 1,
(4) Theatre at Map Ref: In 2a, Townland: Srelane, ED: Ballysimon, RD: Limerick 1,
(5) University College and Land at Map Ref: 2a, Townland: Srelane, ED: Ballysimon,
RD: Limerick 1, Co. Limerick
Exemption - Public purposes

B E F O R E

Liam McKechnie - Senior Counsel

Chairman

Con Guiney - Barrister at Law

Deputy Chairman

Barry Smyth - FRICS.FSCS

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 2ND DAY OF JUNE, 1998

1. By Notices of appeal, five in number, and all dated the 13th day of October 1995, the Appellants therein named appealed to this Tribunal against certain Determinations made by the Commissioner of Valuation in respect of identifiable hereditaments which, for descriptive purposes only, can be set out as follows:

(a)	VA95/5/010	-	The Hunt Museum	RV	£70
(b)	VA95/5/011	-	The Conference/University Club	RV	£60
(c)	VA95/5/012	-	The Schumann Building	RV	£560
(d)	VA95/5/013	-	The Concert Hall/Lecture Theatre	RV	£360
(e)	VA95/5/014	-	The University College	RV	£6,150.

2. These appeals, confined to the Hunt Museum, the Conference Centre/University Club and the Concert Hall/Lecture Theatre, proceeded by way of oral hearings at which all Appellants were represented by Mr. Richard Cooke, SC and Mr. Michael O'Shea, BL with their instructing Solicitors being Messrs. Holmes O'Malley Sexton. Mr. Eamonn Marray BL, appeared on behalf of the Commissioner of Valuation instructed by the Chief State Solicitor. Evidence, in support of the appeals, was given by Mr. Brian Hand, Administrator of the University of Limerick, by Mr. J. Bogue, Director of the Hunt Museum and by Mr. Murphy, a Director of the University Concert Hall. Mr. Brian O'Flynn, the Appeal Valuer, gave evidence on behalf of the Commissioner. Both opening and closing submissions were made. At the outset, the parties agreed, that the issue of rateability/distinguishment should first be dealt with, and accordingly, it followed, that appeal numbers VA95/5/012 and VA95/5/014 were not proceeded with: this given the fact that both of these hereditaments appear as distinguished, in the Valuation List. In consequence of that approach this judgment therefore deals only with appeal numbers VA95/5/010, VA95/5/011 and VA95/5/013.

Background:-

3. By the *National Institute for Higher Education, Limerick, Act 1980 (the 1980 Act)*, the Oireachtas, within the meaning of the *Higher Education Authorities Act of 1971*, established an Institute of Higher Education to be known as the National Institute for Higher Education at Limerick. The main functions of this Institute, as set out in Section 4 of the Act, were:-

"to provide degree level courses, diploma level courses, and certificate level courses and such other courses including post-graduate courses as may seem appropriate to the governing body".

In the same year the "Thomond College of Education" at Limerick was also established by virtue of the Thomond College of Education, Limerick, Act. Again its functions were specified in Section 4 thereof which in general terms were confined to or at least were concentrated on providing adequate training/facilities for persons to become teachers and when so qualified for certain further courses thereafter.

4. The aforesaid National Institute for Higher Education, Limerick, became, by virtue of the *University of Limerick Act 1989*, a University bearing that name. See Section 2 thereof. The functions of the newly established University, being those as set out in *Section 4 of the 1980 Act* as amended by *Section 3 of the 1989 Act*, were significantly greater and significantly more expansive than those of the previous Institute. In particular, the University was mandated, in its remit, to:

"the pursuit of learning and the advancement of knowledge through teaching, research and corroboration with educational, business, professional, trade union, cultural and other bodies and without prejudice to the generality of the aforesaid (emphasis added)".

This Act, to the date hereof, remains the governing statutory provision for the University of Limerick though, it should be pointed out that, by virtue of the University of Limerick (Dissolution of Thomond College Act 1991), the College of that name was dissolved and both its functions and property were transferred to the said University.

All hereditaments, of both the University and Thomond College were, prior to the events hereinafter mentioned, shown as being distinguished in the Valuation List and thus conferred on the Occupiers thereof an exemption from rating.

5. Valuation History:-

(a) 1976 Revision

Following this revision the Occupier of the hereditaments which then existed, was in the Valuation List given as the State, Department of Education (NIHE) with a valuation of £3,000 being placed thereon. All such hereditaments were shown as being distinguished in that list. Between 1975 and 1979 Plassey House, ancillary buildings, a gate lodge and some 79 acres of land were purchased. A new college

with a gross area of about 180,000 sq.ft. emerged at a cost of approximately £3.5m.

(b) 1984 Revision

As a result of the second phase completion in the development of this college a further revision took place in 1984 when there then existed a new building with a gross area of 189,247 sq.ft. plus a link to Plassey House. The cost was approximately £12m; the State was given as the Occupier with the valuation being increased to £5,700. Once more all such hereditaments were shown as being distinguished, as they had to be, and accordingly the rated occupier was exempted from rates.

(c) 1993/4 Revision

In 1993/4, Limerick County Council listed the entirety of the property within the confines of the University for revision. The results thereof, as material to these appeals, were the creation of three new rateable hereditaments with these loosely being described as the Hunt Museum (Lot No. (In 2a) Rated Occupier: Trustees Hunt Museum - RV £70), the Conference Centre/University Club (Lot No. (In 2d) Rated Occupier: University Club - RV £60), and the Concert Hall/Lecture Theatre (Lot No. (In 2a) Rated Occupier: University of Limerick - RV £360).

Following the results of the First Appeal procedure the only change which the Commissioner made, was to declare "the Hunt Museum Limited" as being the rated occupier of the museum so called. Being dissatisfied with both the revision and these results the Appellants have so appealed to this Tribunal.

The Issues:-

6. On behalf of the Commissioner it was submitted to us, in relation to the Hunt Museum; firstly, that the rated occupier was a private company and for at least two years was in occupation, of a discreet and defined area of the College, secondly, that such area was not used exclusively for charitable purposes or dedicated to or used for public purposes and thirdly, that if exemption was to be claimed it would be necessary for the occupier to comply with the provisions of the *Scientific Societies Act 1843*: In relation to the Conference Centre/University Club it was urged that the use thereof could not, within the normal meaning of the word, be described as "Charitable", secondly, that the use thereof was not of a public nature and thirdly, that

compliance with the aforesaid Act of 1843 was necessary in order to gain exemption: and as to the Concert Hall/Lecture Theatre it was claimed firstly, that the same was not used exclusively for public purposes, secondly, that the same was built as a concert hall and not as a lecture theatre, thirdly, that the said building was used in a commercial way and was available to third parties for hire and fourthly that its use, in accordance with the purpose of its construction, was, in a paramount way that of a concert hall and not that as otherwise suggested.

7. On behalf of all of these said Appellants both Mr. Cooke, SC and Mr. O'Shea, BL took issue with each of the submissions made on behalf of the Commissioner. In brief form, it was claimed, that all of the areas in question were part, indeed an integral part, of the buildings of the University, that the same were used for lawful purposes within the competence and *vires* of that University, that such hereditaments were, in reality, occupied by entities of or manifestations of the University and as such were either used exclusively for charitable purposes or most certainly were dedicated to a use for public purposes. Accordingly, all such units should be shown as distinguished.

The above is but a brief summary of the submissions so made with the same being further referred to and further elaborated upon in a later part of this judgment.

The Law:-

8. Under *Section 61 of the Poor Relief (Ireland) Act 1838* a Rating Authority is empowered to make and levy rates "*on every occupier of rateable hereditaments*". Section 71 of the same Act states that the resulting rate is to be paid by "*The person in actual occupation*" of the rateable property. Section 124 defines the word "occupier", as including "*every person in the immediate use or enjoyment of any hereditament rateable under this Act ...*" Though the word "occupier" is so defined the word "occupation" is not as such and accordingly, by virtue of a series of judicial pronouncements the following are now demanded as necessarily existing in order to constitute rateable occupation. These requirements, four in number, are "*firstly there must be actual occupation, secondly the occupation must be exclusive, thirdly, that occupation must be of value or benefit to the occupier and fourthly that occupation must not be for too transient a period*".

Sometimes it happens that more than one person is in the "immediate use or

enjoyment" of the hereditament in question. The issue which then arises, which is one of fact, it to establish who is in "paramount occupation". Having so decided, that person becomes a rated occupier notwithstanding the fact that his occupation is less than total and is by definition shared with one or more other persons. See **Carroll v. Mayo County Council [1967] IR 34** and also see Keane, On Local Government p. 283 *et seq.*

9. In 1964, the House of Lords, when dealing with an appeal from Northern Ireland, held that the correct statutory basis for rating exemption was to be found in *Section 2 of the Valuation (Ireland) Act of 1854*. That is not and never has been the law in this jurisdiction. As far back as 1914 and perhaps earlier the Irish Courts held that the only basis on which exemption can be obtained is that as found in the proviso to *Section 63 of Poor Relief (Ireland) Act 1838*. See **O'Neill v. Commissioner of Valuation [1914] 2 IR 447**. That decision has been subsequently approved of in several cases including **McGahan & Ryan v. the Commissioner of Valuation [1934] IR 736**, **Barrington's Hospital v. Commissioner of Valuation [1957] IR 299** and the **Trustees of Maynooth College v. Commissioner of Valuation [1958] IR 189**. That the proviso, last mentioned is therefore the only correct basis, is now so well established that without statutory intervention one might suggest, that by Judge made law only, it will indefinitely so remain.

10. *Section 63 of the 1838 Act*, insofar as it is relevant, reads as follows:-

"The following hereditaments shall be rateable hereditaments under this Act ... provided also that no church ... or other building exclusively dedicated to religious worship, or exclusively used for the education of the poor, nor any burial ground ... hospital, charity school or other building used exclusively for charitable purposes, nor any building, ... 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." (Emphasis added)

As can be seen this proviso deals with religious worship, the education of the poor, charitable purposes and public purposes. The word "exclusively", or the words "used exclusively", are applied to the first three categories therein mentioned but, by the express words of the Section, cannot in anyway be directly related to the

fourth category, namely hereditaments dedicated to and used for public purposes. There is therefore, a difference in what has to be complied with in order to get exemption, on the one hand, under three of these categories and on the other hand under this category of public purposes.

11. In any discussion on exemption, whatever the category might be, *Section 16 of the 1852 Act* is generally also mentioned as is, of course, *Section 2 of the 1854 Act*. Section 16 provides that no hereditament "*shall be deemed to be of a public nature... unless the same shall be altogether of a public nature*". In *Section 2 of the 1854 Act* the Commissioner is empowered to distinguish certain hereditaments. This procedural Section, when dealing with public purposes, enables such hereditaments to be so distinguished "*as long as they shall continue to be of a public nature, and occupied for the public service, or used for the purposes as aforesaid*". Hence, from time to time, the interchangeable use of words like "public purposes", or "of a public nature", or "altogether of a public nature", or "occupied for the public service" and/or "used for the purposes aforesaid". If such words have the same meaning as is likely, then their non-discriminatory use presents no difficulty. If however a different meaning, whether one of enlargement or contraction is ascribed to those words appearing in *Section 16 of the 1852 Act* or *Section 4 of the 1854 Act* then, it would be the view of this Tribunal that the exemption at all times must be governed and considered solely by to the phrase "*dedicated to or used for public purposes*" and not otherwise, with the meaning attaching thereto, by the body of case law built up for well over a century, taking its dominant position. This must in our opinion follow, given the primacy of that Section constituting as it does the only statutory basis for exemption in this jurisdiction.

"Dedicated to or used for public purposes":-

12. In the case of **Cork Corporation v. The Commissioner of Valuation [1916] 2 IR 77**, the Court at first instance held that the words "public purposes", could in terms of rateable occupation mean firstly a hereditament occupied by the Government, secondly a hereditament in which every member of the public has an interest and thirdly a hereditament where only a limited or defined class of the public, for example ratepayers of a Union, Barony, County or Cess had an interest. The Court so determined that all three meanings were within "public purposes", as set out in *Section 63 of the 1838 Act*. However on appeal this decision was reversed and it

was held that whilst the first and second meanings were within Section 63 the third was not. In so deciding the appellate Court followed the **Londonderry Bridge case (Bridge - Tolls of Bridge) IR 2CL 577**, the **Sligo Harbour case (Harbour) [1899] 2 IR 214**, and the **Mayor of Limerick case (Gasworks) IR 6CL 420**. That this view was the correct state of the law was confirmed by the Supreme Court in **Kerry County Council v. Commissioner of Valuation [1934] IR 527**. This case dealt with offices, a board room and an apartment for a caretaker. All were owned and provided by the Council for the purposes of its statutory duties and requirements. It was held that whilst the same, were indeed of public interest nevertheless this was confined to an administrative area and thus fell within the third category and so did not qualify for exemption. That such continues to be the law was more recently confirmed by Costello J. in **Fingal County Council v. Commissioner of Valuation (Aer Rianta) U/R: 9/2/95** and by Barron J. in **Dublin County Council v. Aer Rianta CPT U/R:15/5/92**.

Educational Establishments:-

13. The ground under consideration for exemption in this case, namely "public purposes", was considered by Courts in this jurisdiction in the context of educational establishments as far back as 1904 and indeed earlier. See **The Pembroke Urban District Council v. Commissioner of Valuation [1904] 2 IR 429**, **University College Cork v. Commissioner of Valuation [1911] 2 IR 593** and the **Trinity College [1919] 2 IR 493**. From these cases it can be said that the following have been considered as relevant and material in deciding whether or not any particular establishment is dedicated to or used for public purposes:-
- (a) whether the institution itself has been constructed by public monies so raised under statute or otherwise,
 - (b) whether that institution is maintained either in whole or in part by public monies,
 - (c) whether the occupier has any personal beneficial interest in that institution,
 - (d) whether that occupier derives any private profit or use therefrom,
 - (e) whether that institution is open to all comers without discrimination as to class, locality, creed or otherwise,
 - (f) whether the institution is of a public nature,
 - (g) whether the teachers and staff, including administration staff, are in whole or in part publicly funded,

- (h) whether the subjects on which tuition is given are of a public nature and/or of a public purpose,
- (i) whether any income, derived by fees or otherwise must be, by obligatory trust, applied for the sole and exclusive benefit of that institution,
- (j) whether the accounts must be submitted to the Comptroller and Auditor General,
- (k) whether that institution has been established under a Statute of General Public Utility, and
- (l) whether, altogether, the institution is of a public nature and used exclusively for such purpose.

14. By the application of some or all of this criteria the Ballsbridge Branch of the Pembroke Technical School, which was established by the *Technical Industrial Acts of 1888/1891* was given the same exempt status as that conferred in 1919 on the University at Cork. However again, by the use of these same principles this status was denied to Trinity College in 1919 because, as of that time, the College was self governing; was solely responsible for income, staff and teachers, and for the general administration thereof; was independent and free from all government or outside agencies and was not, subject to scrutiny in respect of its finances.

Furthermore, no person had any right as such to become a student. In addition, income derived by way of or from students fees did not have to be devoted exclusively to the benefit of the college. Accordingly as the crucial determining factors were substantially different in this case from those prevailing at Ballsbridge and Cork, the Court rejected the claim of Trinity College. See also the **Maynooth decision**, supra as well as the decision of this Tribunal in *Plassey Trust Co. Ltd. v. Commissioner of Valuation VA89/0/112 - VA89/0/127* (29/1/90).

15. As can be seen, from a comparison of the cases mentioned at paragraph 12 above, with a comparison of the cases dealing with educational establishments, the Courts have made a distinction between hereditaments of a non-educational nature and those of an educational nature. This for the purposes of determining whether the rateable hereditament in question is or is not dedicated to a use for public purposes, either in the way of being occupied by the government or - and more particularly, in the way of every member of the public having an interest therein. It is accordingly, our opinion that in respect of educational establishments, if the criteria above outlined are essentially complied with, then, in that context, and subject to the next following

paragraph, the hereditament in question shall be distinguished and so shown in the Valuation List.

Private Profit or Use:-

16. There is, as appears from the proviso contained in Section 63, an exception carved out of the general provisions thereof. Even if the proviso, *prima facie* applies, nevertheless exemption will not be granted where "*any private use or profit shall be directly derived*" from the hereditament in question. The case law, on this phrase, is too numerous to mention and indeed unnecessary to consider in any depth. It is sufficient to refer to the case of **Dublin Cemeteries Committee v. Commissioner of Valuation [1897] 2 IR 157** where it was held that Glasnevin Cemetery was not entitled to exemption as the Trustees were not required to apply any surplus income solely and exclusively for the benefit of the Cemetery. Accordingly, it was held that the hereditament could not be described as one "exclusively used for charitable purposes". In 1980 the Dublin Cemeteries Committee Act was passed whereunder, in respect of any surplus arising from the operation of the Cemetery, the Trustees were obliged to apply the same for purely charitable purposes. Following the passing of that Act the Supreme Court, in 1985, granted exemption to Glasnevin Cemetery on the basis that by reason of the statutory provisions as aforesaid, no private profit or use could at any time thereafter be legally derived therefrom. See **Dublin Cemeteries Committee v. Commission of Valuation U/R: 11th November 1975 Supreme Court.**

The Evidence - Agreed (almost Exclusively so) or so Found:-

17. **The Campus:**
The University of Limerick occupies several acres of land on which are constructed a great number of buildings and on which a great number of services are provided. It is bounded on the north east by the River Shannon and on the south west by a network of roads. Its buildings include the Foundation Building, the Horticultural Block, Plassey House, the Robert Schumann Building, the Sports Building etc. It includes tennis courts and all weather pitches. It has an athletics track and several playing fields. It is by any standards a significant institution playing a major role both provincially and nationally.
18. **The Hunt Museum:-**
John and Gertrude Hunt were scholars and dealers of medieval works of art. Some

years ago they made a presentation to the Irish nation of a private collection of Irish antiquities and European decorative art. At a later date a further collection of decorative art was also presented. In order to reflect both the presentation and the national importance thereof the Government decided in conjunction with Limerick Corporation, the OPW and the Hunt family to renovate the old Custom House in Limerick and when so restored to have the major portion of this collection housed therein: this for the purposes of public use and public display. Pending the completion of that refurbishment it was necessary to identify some suitable location at which, on a temporary basis and to meet a temporary necessity, this collection could be secured. Hence this area in the lower ground floor of the Foundation building within the University of Limerick. From the evidence so adduced we are quite satisfied that no Lease or other Document containing a Contract of Tenancy exists between the University and the company Hunt Museum Limited. We are also satisfied that no rent passes from one to the other, that access to this area is obtainable only through the University itself, that the safety and security of the area remains within the control and responsibility of the University, that members of the public, on the payment of a small admission charge, are entitled to and indeed encouraged to visit this exhibition, that entry thereto is free to University staff and students, to students of the Limerick College of Art and to the Friends of the Hunt Museum.

From the Management Accounts for the period January to December 1992 and from the Audited Accounts from July 1993 to December 1994 it is clear that effectively very little if any surplus income is derived from this enterprise and that in any event no part of any surplus can be used in anyway to confer a private benefit on any person.

The Memorandum and Articles of Association of this company, which manages the museum indicate that:-

"the primary objective of the company was to establish a museum/museums in the Limerick area or alternatively accommodation forming the property of an academic body or university for the purpose of displaying these articles constituting the Hunt Collection ... for the purpose of making such articles available for viewing and studying by the public generally and particularly for those members of the public interested in the study of articles of historic and cultural interest".

19. Conference Centre/University Club:-

Plassey House, occupied by the University of Limerick, is an integral part of this Institution and is used for a multitude of purposes including that of offices for the President and his staff. As stated above part of this house is used by the University Club. The Club in question was established by or under the auspices of and certainly at the instigation of the University with its prime purpose being the establishment and development of a direct relationship between leaders of industry, commerce, business and the professions on the one hand and the staff and students of the University on the other hand. This was intended to and has had the direct benefit of creating within those people a greater awareness of and interest in college activities and also of providing an invaluable mechanism for communication which can only benefit students and graduates both in the pursuit of knowledge and in the obtaining of employment post their departure from this college. Furthermore it is used to entertain VIP and other prominent people as a way and means of obtaining finance for the college and as a method to promote the interests of the University.

The actual area used by the Club is about 2,150 sq.ft. The Memorandum and Articles of Association confirm the primacy of purpose of this club and also prohibits the obtaining by any person or any private profit therefrom.

20. The Concert Hall/ Lecture Theatre

On the Campus of the University there is as appears from paragraph 17 above, a building known as the Foundation Building. This building which is a core part of the University comprises *inter alia* the following:-

- (a) research centres for post-graduates with facilities for at least 250 of such persons,
- (b) facilities for professors, senior researchers, staff and post-doctorate staff totalling about 100,
- (c) the National Centre for Quality Management,
- (d) the Centre housing part of the National Self-Portrait Collection,
- (e) the Centre housing part of the National Water Collection,
- (f) the Centre for Project Management,
- (g) the Centre for Tourism Policy Studies,
- (h) the "Concert Hall", which has a capacity for 1,000 people,
- (i) two large lecture theatres,

- (j) large concourse areas,
 - (k) cafeteria,
 - (l) a full three-quarter storey high glazed atrium of about 64 metres long and 16.5 metres high and varying in width between 8 and 20 metres, and
 - (m) vertical and horizontal circulation routes to other parts of the University.
21. As is evident from the above part of this building includes what has been described as a "Concert Hall". This area is operated by the University in conjunction with the University Concert Hall Limited, a company incorporated on the 12th August 1993, being one limited by guarantee and having no share capital. This company is exempt from tax under *Section 333 of the Income Tax Act 1967* as applied to Companies by *Section 11(6) of the Corporation Tax Act 1976* and by *Section 22 of the Capital Gains Tax Act 1973*.
22. This hall is used as a Lecture Theatre or otherwise on a daily basis utilised by the college. It is used as such, for lecturing, for educational purposes, for grand ceremonies, for ceremonial occasions, for graduation days, and for visiting VIP's and other public persons who may lecture at the University or otherwise make presentations. It is the *aula maxima* of the University. It is used in conjunction with the two other theatres and space within all three, must be co-ordinated in order to satisfy the demands of different students and faculties. In addition it is used in conjunction with the School of Music which had its Chair established in 1993. Hence, activities cultural in nature, like music, drama and dancing take place therein. It was at the relevant date in a loss making situation.
23. Its primary object, as appearing in its Memorandum of Association, is to "*support the University of Limerick and other educational establishments in their promotion of the arts, music, literature, painting, dance and film and a pursuit of education by arranging for the provision, delivery and holding of concerts, operas, musical recitals, art exhibitions, films and public lectures calculated to advance directly or indirectly the cause of education and the advancement of knowledge for students and the public generally*". It has, as one would expect, many other objects but these are of a subsidiary and ancillary nature and in any event are commonly found in any comprehensive Memorandum of Association. By Clause 3 thereof both the income and property of the company must be applied solely towards the promotion of the

objects of the company and no dividend, bonus or other distribution of profit can take place to any of its members. In the event of a winding up or dissolution the property or income must essentially go to the University of Limerick or its charitable nominee.

24. In addition to the above this building, when constructed, was fitted with quite advanced acoustic facilities which enhance speech delivery and reception thereof to all those within. As such, part of its use is undoubtedly that of a Concert Hall. Many concerts with a variety of artists have taken place within the hall over the years. In addition orchestral performances and classical recitals are both common and frequent. Furthermore the hall is, when otherwise not required available for third party hire at a certain specified charge.

The rated occupier of this hereditament is given as the "University of Limerick".

25. **Decision:-**

Before dealing with our Determination on the issue of Rateability, in respect of the three hereditaments in question, there are two further issues which should be dealt with. As above stated it was argued on behalf of the Appellants that not only were the subject hereditaments "dedicated to or used for public purposes" and hence entitled to exemption; but in addition it was argued that the same result should follow as these hereditaments were furthermore "used exclusively for charitable purposes". Whilst this ground was urged upon us it should be said that it was placed in very much a secondary position to the "public purposes" argument and was therefore not pursued in any substantial or vigorous way. In any event it is clear from the decision in *Barrington's Hospitals* case that the words "charitable purposes" cannot be interpreted as including any of the other uses or purposes which, by name, are specifically mentioned in the proviso. For example, as applies in this case, education is expressly mentioned in the proviso and accordingly educational purposes would have to be considered within that phrase and not as part of "charitable purposes". Since exemption is available only in respect of "the education of the poor" it is clear therefore that the hereditaments in this case cannot attain exemption under the heading of charitable purposes.

26. The second point arises from the reference by the Respondent to the *Scientific Societies Act of 1843* and by the submission on his behalf that for any of the instant

hereditaments to obtain exemption, it would have been necessary for the occupier to comply with the provisions of this Act and to have produced the required Certificate from the Register of Friendly Societies. In our view this submission is not well founded. It is quite clear from a consideration of the relevant statutory provisions including those contained in the 1843 Act that the exemption available there under is not in any way exclusive of *Section 63 of the 1838 Act* and accordingly it is open to a ratepayer to come within the provisions of one or both of these Statutes/Statutory Provisions and to obtain exemption thereby. It therefore follows that if otherwise the Appellants in this case can obtain exemption under Section 63 then they are entitled to so do notwithstanding their non-reliance on the 1843 Act.

27. The University of Limerick and all land, buildings and services thereof are owned by the State under some one or other of its organs or branches or manifestations. As a State institution it is statutorily obliged to carry out, implement and fulfil its functions both specifically and generally. Any activity therefore which is in itself a lawful activity and which is within the authority/competence of the University is an activity which can be lawfully pursued by that Institution. Most, if not all of such activity, is related to the use of land and buildings. As heretofore has been the situation, and as applies to other Universities and Educational Institutions within the State, those buildings so involved are exempt from rating by virtue of *Section 63 of the 1838 Act* and are, on the Valuation Lists, so shown as distinguished by virtue of *Section 2 of the 1854 Act*. More particularly the reason in law for this is that such buildings are dedicated to or used for public purposes. *Prima facie* therefore all such buildings so used for such activity are and should be exempt. In the present case the Commissioner is requesting this Tribunal to uphold his view that the individual circumstances of the hereditaments in question are such, so as to deprive the University of this status. What therefore could be the factual basis for such a conclusion?

28. **The Hunt Museum:-**

As stated above this is a unique collection of works of art and antiquities which range from simple tools of the neolithic hunter to drawings of Pablo Picasso with however a heavy concentration on medieval works of European decorative art. In two presentations these works, part of the privately owned Hunt Collection, were

presented to this State. The collection therefore is in public ownership. As a measure of its importance the Government has decided to refurbish at considerable expense the old Custom House in Limerick so that both of these collections can have a permanent headquarters thereat. Pending the availability of these premises it was obviously necessary to accommodate this collection in some building or part thereof which reflected the wishes of its donors and which, though secure, would be accessible to the public. From this University's point of view, a University which places a high priority on the establishment and promotion of cultural and artistic activities, what better place for its temporary accommodation than within the university itself? This is precisely what has happened in this case. The fact that there is a company involved namely the Hunt Museum Limited in our opinion is quite irrelevant. It is known by those directly involved, including all interested members of the public, that the donation of such collections, examples of which are many and the results of which are enriching, are always given and/or sustained on the basis that nominated Trustees, whether individual persons or body corporates, would be, on behalf of the general public, responsible for their exhibition, display, maintenance and security. The presence of such an entity therefore in our view in no way, affects the status of the collection itself.

- 29.** The area in which these works are housed is clearly, for the purposes of this Appeal, part of a university building which is State owned. That building is on any assessment an integral part of the university itself. The accommodation so provided is not formulated in any Lease or other written document containing a contract of tenancy or otherwise establishing the relationship of landlord and tenant. There was no evidence of any rent being paid. Access can only be gained through the University itself with the safety and security of that institution remaining within its governing body. From all of the evidence it is clear that its location and duration of stay were temporary in nature. As such there was at all times a legal entitlement on the University to insist upon a change of venue either within or outside its boundaries.

Why however would it do so? The presence of the collection could only have an enhancing effect on the statutory obligations of the University to pursue and impart, not only to its students but also to the public at large knowledge, learning and information in the broadest sense.

- 30.** We are therefore satisfied, on the evidence in this case, that it is highly unlikely that

the Hunt Museum Limited is, in a legal sense, in rateable occupation of this hereditament. If in fact this was the only ground upon which exemption could have been sought, we would have been prepared to so hold. However, we are also of the opinion that the use to which this area is presently being put and the purpose of such use, come, in our view unquestionably, within the "public purposes" part of the proviso contained in Section 63 and accordingly we declare that this area should be so distinguished in the Valuation List.

31. Conference Centre/University Club:-

During the course of these Appeals a brochure was produced which had previously been issued by the University Club. In a certain part thereof the prime objective of this Club was stated, quite unequivocally, to be "*to further strengthen the linkages between leaders in the business community and faculty and staff at the University.....*": Elsewhere the aims of the club are expressed thus "*to develop and strengthen closer working relationships between leaders in the community and the faculty and staff of the University*". As stated above in part of this judgment the club's membership comprises all members of the staff of the University as well as 180 other persons drawn broadly from the commercial, industrial, business and professional walks of life. The Club, it is acknowledged, has access to part of Plassey House, an historical building which is owned by the Minister for Education, and which otherwise has within it many offices for staff members, including the President, and other facilities which are directly related to the functions of the University. The area in question is but 2,153 sq.ft. and *inter alia* offers the facilities above identified. This area has been made available by the University. Again there is no evidence of any contractual relationship between the Club and the University. Again there is no doubt but that the University could, perhaps without notice, certainly with limited notice, request the club to vacate the part so occupied. But if it did we would firmly be of the opinion that unless perhaps alternative and better arrangements were made, there would be expressions of opprobrium not only within the staff but also indeed within the student body itself. The reasons are self evident. The entire essence of this club is to advance the college. It is to provide a platform by which influential members of society can acquaint themselves with the University, its structures, services and above all with its graduates and people. It serves for the latter, at no cost or charge, as an advertising window which must be the envy of many other like Institutes. It acts as a medium by which graduates have a greater opportunity of work placement than might otherwise be the case. Lest,

however it should be thought that its existence was for a one directional purpose only, it should also be pointed out, in accordance with the evidence, that it provides a means of encouraging those persons who have by now established themselves in the world at large to have an inward view and a more intimate interest in all facets of the University life. This has enormous benefits for the institution as well of course, as providing a welcome opportunity for fund raising. Can it therefore be said that this hereditament is truly not one to which exemption should apply?

32. Suppose for a moment that the activities of this club were carried on by a group or committee or branch of the University itself, without particular designation, could it be seriously suggested that the hereditaments could be rated? We doubt this strongly. In our opinion the establishment of this club and the provision of facilities by which it can operate are entirely the doing of the University and are ultimately under its control, responsibility and desire. In our view, the actual entity or mechanism by which the purposes of the University are to be satisfied is not at least exclusively a determining factor in rateability. It is the use of the hereditament in its dedication to public purposes that is important. Accordingly, we have no doubt but that exemption should also apply to this hereditament.

33. **The Concert Hall/ Lecture Theatre:-**

The argument against exemption, in relation to this unit, is based on the fact that in addition to being used as a lecture theatre its specifications are such that it is capable, and indeed is used, as a concert hall. A list of performances, from September 1993 to February 1994 was produced in evidence. This shows on average perhaps eight or nine performances a month. In addition this hall is available for outside hire, when not otherwise required; On both of those grounds the Commissioner of Valuation alleges that its use is therefore commercial in nature and consequently rateable. In our view these arguments are not well founded. The evidence before us showed that this hall was used virtually on a daily basis for the purposes of University education. It was used for all ceremonial occasions including graduation ceremonies. It was used as a venue for visiting dignitaries. It was used to entertain such persons and otherwise was available, like all other buildings, as an integral part of the overall space and facilities which are required in order to service the demands of a modern University. In fact the evidence of Mr.

Murphy, which was uncontroverted, showed that this hall is used, for about 80% of the time, as a theatre solely and exclusively involved in University activities with the residual 20% of use being performance related. These concerts offer a wide variety of performances including classical and orchestral. The occupancy varies depending on the type of performance but in general it is well supported: it is the home of the Irish Chamber Orchestra.

34. For administration and tax purposes and in order to assess its financial viability the University established a company namely the University Concert Hall Limited, which operates and manages this hall for the purposes of its concert activities. Accordingly to Clause 2(a) of this Company's Memorandum of Association the primary object for which the company was established was to support the University.....: according to Clause 3 all income and property must be applied solely for the objects of the Company. In the event of a winding up any surplus must be given to the University or its charitable nominee.

35. On behalf of the Commissioner it was urged upon us that the paramount occupation and use of this Concert Hall/Lecture Theatre was that of the former and not of the latter. We reject this submission. We are quite satisfied, on the evidence, that by far the most dominant use of this hereditament is that associated with the day to day and routine activities of the college: this in its capacity of being an educational establishment. We are also satisfied that given the University's functions as specified in *Section 4 of the 1989 Act* it is quite within both its remit, and its lawful activities, to hold such concerts and to otherwise maximise the use of its building provided that the resulting benefits if any are devoted exclusively to the University. Furthermore, it should be noted that the public at large, both nationally and internationally have an equal right and entitlement to pay the required admission charge and to attend any open performance conducted therein. We are therefore of the opinion that this concert hall must also be exempted from rating.

Finally in any event, the valuation list, as produced does not show the University Club Limited as the occupier. Rather it is "University College". Again, if this was the only ground of Appeal, we would hold that this unit should not be so rated.

- 36.** In conclusion we are of the opinion that all the hereditaments, the subject matter of these appeals should be exempt and so shown in the Valuation List.