Appeal No. VA99/2/020

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Marks & Spencer (Ireland) Ltd., **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Department Store at Map Reference 24-27a, 28, 29 incl. 26-30a Liffey, Mary Street, Ward: North City, North City 2B, County Borough of Dublin.

B E F O R E

Con Guiney - Barrister at Law	**Deputy Chairman**
Finian Brannigan - Solicitor	**Member**
Rita Tynan - Solicitor	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 13TH DAY OF OCTOBER, 2000

By Notice of Appeal dated the 30th day of April 1999, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £7,000 on the above described hereditament.

The Grounds of Appeal as set out in the said Notice of Appeal are that; "the revision is invalid due to the failure of the Local Authority to issue the relevant notification in accordance with Section 3(4)(a) of the Valuation Act 1988.

The quantum has been agreed at R.V. £7,000".

The relevant valuation history is that the subject was revised at 1997/4. The rateable valuation was fixed at 1997/4 at £7,195. On appeal the quantum of valuation was agreed at £7,000. The appellant also raised the issue of notification to it pursuant to Section 3(4)(a) of the 1988 Act.

The only issue therefore for the Tribunal to determine is whether the appellant was notified of the revision request pursuant to Section 3(4)(a) of the Valuation Act 1988.

A written submission prepared by Mr. John Smiley on behalf of the respondent was received by the Tribunal on 10th September 1999. The Tribunal also received on the 23rd September 1999 a written statement of the evidence to be given at the Tribunal hearing by Mr. Peter Ayton, Acting Assistant Principal Officer in the Rates Office of Dublin Corporation. Mr. Ayton was called as a witness for the respondent.

A written submission prepared by Mr. Thomas Davenport ARICS ASCS on behalf of the appellant was received by the Tribunal on 22nd September 1999. Mr. Davenport is a Chartered Surveyor with Lisney, Estate Agents, Auctioneers and Surveyors.

The oral hearing took place at the Tribunal's Office in Dublin on 6th October 1999. Mr. Owen Hickey B.L. represented the appellant. Mr. John O'Shee, Solicitor, Assistant Law Agent in the Law Department of Dublin Corporation represented the Corporation and the respondent.

At the outset of the hearing Mr. Hickey said he would be putting the respondent on proof of the contents of a letter from An Post dated 16th March 1999 to Mr. John Smiley. A copy of this letter was contained in Mr. Smiley's written submission. Mr. Hickey also requested that Mr. Ayton would not refer to the contents of this letter.

The Tribunal ruled that Mr. Ayton should not refer to this letter in his evidence and also that Mr. Sheridan the writer of the letter should be called as a witness by the Respondent to prove the contents of this letter.

Mr. Thomas Davenport gave sworn testimony on behalf of the appellant. He adopted his written submission as his evidence to the Tribunal.

In continuing testimony Mr. Davenport said that from 1981 until 1998, apart from a three-year period, the Head Office of Marks & Spencer was located at 24/29 Mary Street, Dublin. This is the address of the property, the subject matter of the present appeal.

Marks and Spencer had located their head office at 16/17 Lower O'Connell Street, Dublin for a period of three years between 1988 and 1991. Mr. Davenport said the reason for this re-location was due to the fact that the Mary Street premises were being refurbished. When the refurbishment had been completed at 24/29 Mary Street the appellant returned to these premises in 1991.

In further testimony Mr. Davenport said that all correspondence sent by Marks and Spencer to the rates department of Dublin Corporation for the period 1981 to 1988 and the period 1991 to 1998 came from the Head Office at 24/29 Mary Street. Mr. Davenport then referred to copy documents contained in appendices to his written submission to substantiate this point.

Mr. Davenport said that rate demand notices relating to premises owned by Marks and Spencer at Grafton Street were sent from 1995 onwards to the appellant's head office at 24/29 Mary Street. Copies of the relevant notices were contained in an appendix to Mr. Davenport's written submission.

In continuing testimony Mr. Davenport said that all water rate demands sent by Dublin Corporation to the appellant relating to its Mary Street premises were sent to 24/29 Mary Street. Mr. Davenport then referred to copy water rate demand notices contained in an appendix to his written submission. These demand notices ranged in time from March 1995 to September 1996.

In further testimony Mr. Davenport said the first he heard about the revision was by way of a telephone call from Mr. Liam Cahill the revising valuer on 29th October 1997. Mr. Cahill wanted to inspect the subject premises. A joint inspection was subsequently arranged. Mr.

Davenport said that in the period between 29th October 1997 and 10th November 1997, when the revised valuation list was published, he had no opportunity to engage in meaningful negotiations on behalf of the appellant with the Valuation Office.

Under cross-examination by Mr. O'Shee Mr. Davenport said that the address for Marks and Spencer contained in their appeal notice namely 15/17 Upper Abbey Street, Dublin was a temporary address used by the appellant while the Mary Street head office was being refurbished.

In reply to a question from the Tribunal Mr. Davenport said that his contention that Dublin Corporation had express knowledge that the head office of Marks and Spencer was located at 24/29 Mary Street from 1995 was based on the rates demand notice in connection with the Grafton Street premises of Marks and Spencer sent by the Corporation to 24/29 Mary Street. He had already referred to these notices as contained in an appendix to his written submission.

Ms. Evelyn Fitzpatrick gave sworn testimony on behalf of the appellant. Ms. Fitzpatrick is the company secretary of Marks and Spencer. Ms. Fitzpatrick said that the appellant's head office had been located at 16/17 Lower O'Connell Street, Dublin for approximately three years ending about September 1991.

Ms. Fitzpatrick described certain steps she took in 1991 when the appellant was vacating the O'Connell Street premises and returning to 24/29 Mary Street. Firstly she notified An Post to re-direct mail. Secondly, using the appellant's computer database and a template letter all suppliers including Dublin Corporation were notified of the move to Mary Street.

In the course of his cross-examination of Ms. Fitzpatrick, Mr. O'Shee put in evidence a letter from Marks and Spencer to Dublin County Council dated 20th January 1988. This letter stated that from 25th January 1988 the head office of Marks and Spencer was to be located at 16/17 Lower O'Connell Street. It was not disputed by the appellant that this letter had been passed on by Dublin County Council to Dublin Corporation.

Ms. Fitzpatrick confirmed that the letter had been sent by her superior at Marks and Spencer. She said this letter would have been manually produced in 1988. In further replies Ms. Fitzpatrick said that in 1991 the address of Dublin Corporation at Castle Street would have been on the appellant company's database.

Under further cross-examination Ms. Fitzpatrick said that in 1991 she signed five hundred to six hundred letters to suppliers informing them of the change of the appellant's address. She did not remember signing a letter directed to Dublin Corporation. Additionally there was no copy of such a letter to Dublin Corporation because the six-year retention period for keeping records had elapsed.

Mr. O'Shee asked Ms. Fitzpatrick about the appellant's re-direction request, to An Post in 1991. Ms. Fitzpatrick said this re-direction request would have a currency of three months.

Mr. O'Shee then asked why given the existence of the re-direction request that rates demands for 24/29 Mary Street were being sent to the O'Connell Street premises by Dublin Corporation and were being very promptly paid by the appellant. Mr. O'Shee put it to Ms. Fitzpatrick that this practice had continued until 1998.

In reply Ms. Fitzpatrick said she thought that mail addressed to Marks and Spencer had been left in an open hallway at 16/17 Lower O'Connell Street. It seems that some of the occupiers of the O'Connell Street building when shopping at Marks and Spencer had brought the mail to Mary Street. In further replies on this point Ms. Fitzpatrick said one occupier of 16/17 Lower O'Connell Street had his own business. He shopped in Marks and Spencer and regularly brought mail to the Mary Street premises of the appellant.

Mr. Peter Ayton gave sworn testimony on behalf of the respondent. He said that on the 10th May 1996 Dublin Corporation inspected the premises of the appellant at Mary Street. A notice pursuant to Section 3(4)(a) of the Valuation Act 1988 with respect to the said premises was issued by the Corporation on 31st May 1996. The revision notice was posted on 3rd September 1996 to 16/17 Lower O'Connell Street. There was no record of the letter being returned to

Dublin Corporation. Mr. Ayton said he had a copy of the revision notice and he had a copy of a postal sheet with respect to this revision notice and others date stamped by An Post. In November 1997 the result of the revision was posted to Marks and Spencer at 16/17 Lower O'Connell Street.

In continuing evidence Mr. Ayton said Dublin Corporation were not notified by the appellant of the change of address back to Mary Street. He said that Dublin Corporation continued to forward all correspondence about rates to 16/17 Lower O'Connell Street. In particular the rate demand for 1997 with respect to the Mary Street premises was forwarded on 14th February 1997 to Lower O'Connell Street. The said rates were paid on 14th March 1997 and on the 25th July 1997. Again the 1998 rate demand was forwarded on 12th February 1998 to Lower O'Connell Street. The said rates were paid on 27th February 1998 and on 26th August 1998. In April 1998 the rate collector for the Mary Street area became aware of the change in the postal address of the appellant and he amended the records of Dublin Corporation to show 24/29 Mary Street as the postal address for rate demands in connection with the property located at that address. Mr. Ayton said the 1999 rate demand had been forwarded to Mary Street. He was satisfied that the Corporation had complied with notice requirements of Section 3(4)(a) of Valuation Act 1988 with respect to the appellant.

Mr. Ayton said Dublin Corporation were relying on the letter dated 20th January 1988. The appellant had never countermanded the instructions contained in that letter. Furthermore up to and including 1998, the rates demand for Mary Street were sent to O'Connell Street and they were always promptly paid.

In further evidence Mr. Ayton said the Corporation had a number of rate collectors in the city of Dublin in charge of specific areas. The rate collector for the Grafton Street premises would have been told to send rate demands for the Grafton Street premises to Mary Street. There was nothing unusual about large commercial organisations giving instructions to have rate demands sent to varying locations. He said that in July 1999 one of the major banks in Dublin had instructed that all rate demands for its individual branches be sent to the bank's headquarters. Prior to that, rate demand notices were sent to each individual branch.

Under cross-examination by Mr. Hickey, Mr. Ayton said he could not exclude the possibility that, Marks and Spencer had informed Dublin Corporation about the change of address to Mary Street. He added however that Dublin Corporation had a file which contained the letter dated 20th January 1988 but it had no other letter on the file from the appellant about a change of address.

Mr. Hickey cross-examined Mr. Ayton as to how the rate collector for Grafton Street knew that Mary Street was the appropriate address to send rate demands for the Grafton Street premises. Mr. Ayton said he did not know.

Mr. Padraig Staunton gave sworn evidence on behalf of the respondent. He confirmed that he was the rate collector for the Mary Street area. He said that when corresponding with Marks and Spencer about one of their properties in the Jervis Centre he had a conversation with the rate collector for O'Connell Street who told him Marks and Spencer were no longer located at O'Connell Street. He immediately changed the address for rate demands for the subject to 24/29 Mary Street.

In further testimony Mr. Staunton described the process whereby the address for rate demands was changed. Occupiers request a change of address by telephone or letter. On the other hand when payment of rates does not follow a demand the Corporation will make further enquiries.

Mr. John Smiley gave sworn testimony on behalf of the respondent. He said he was the appeal valuer with respect to the subject property in 1993 and 1997. He confirmed that during the appeal negotiations in 1997 Mr. Davenport raised quantum and notice as issues. Mr. Smiley said he was satisfied that the statutory requirement as to notification in 1997 to the appellant had been complied with. Mr. Smiley said that during the 1993/4 appeal negotiations, there had been to his recollection, no issue raised as to the address of the subject property or notification by the appellant.

Under cross-examination by Mr. Hickey, Mr. Smiley said it was the appellant who requested the revision in 1993. He agreed in the circumstances that notification would not arise as an issue.

In reply to a question from the Tribunal Ms. Fitzpatrick said that the present location of the headquarters of the appellant at 15/17 Upper Abbey Street did not require any change of address as it was across the road from 24/29 Mary Street. She was able to obtain all the mail from the Mary Street premises on a continuous basis.

At this stage in the hearing all the evidence of the appellant had been heard. All the evidence of the respondent had been heard with the exception of the contents of the letter dated 16th March 1999 from An Post to John Smiley. Mr. Hickey had applied to have the respondent put on proof of the contents of the said letter. The Tribunal then adjourned the hearing to 22nd October 1999 in order to hear this evidence only and then for the hearing of legal submissions by the appellant and the respondent.

At the resumption of the hearing on 22nd October 1999 Mr. Joe Sheridan gave sworn testimony on behalf of the respondent. He said he was employed by An Post at Cardiff Lane in Dublin. He said he had earlier in the year received a telephone call from John Smiley. Mr. Smiley was seeking information about a re-direction order by Marks and Spencer from their offices at O'Connell Street. As a result of this telephone call Mr. Sheridan contacted an Inspector at the Rutland Place sorting office of An Post in Dublin.

This inspector said that there was a ledger record at Rutland Place regarding a re-direction by Marks and Spencer from O'Connell Street to Mary Street. No other written records were available as An Post had a two-year retention period for the documents concerned.

At this stage Mr. Hickey said that was hearsay evidence. He was not making a formal objection to the evidence but he asked the Tribunal to assess and give the weight appropriate to hearsay evidence to the testimony of Mr. Sheridan.

Under cross-examination by Mr. Hickey, Mr. Sheridan said the ledger was what An Post called a daily paper record. The re-direction order from Marks & Spencer's covered a three-month period in May-June 1996.

In reply to a question from the Tribunal, Mr. Sheridan said he had obtained the information about the re-direction order over the telephone from the Inspector at Rutland Place. The Inspector had also faxed some information to him. It was on that basis that he informed Mr. Smiley about this matter.

At this stage Mr. Hickey sought to introduce new evidence. He said this evidence had been uncovered in the period since the last hearing. The new evidence included a letter written by Mr. Davenport on the 5th July 1993 from Lisneys stating that 16/17 Lower O'Connell Street had been vacated by Marks & Spencer's in August 1991 and that it had assigned the interest in the lease to Halligan Insurance. Mr. Davenport's letter was to the Rates Department of Dublin Corporation. The new evidence also contained a copy of an extract from the Valuation list showing Halligan's Insurance as the rateable occupier in 1993 of 16/17 Lower O'Connell Street.

The Tribunal notes that nowhere in the bundle is there a mention of 24/29 Mary Street or an instruction by the appellant's agent to direct correspondence to 24/29 Mary Street.

Mr. Hickey submitted that this new evidence was absolutely material to the appellant's case. It would be an injustice to his client if the new evidence was not admitted to the hearing. Furthermore Mr. Hickey said that as this new evidence was simply a matter of fact it would not prejudice the respondent.

Again Mr. Hickey submitted that at a recent hearing of the Tribunal witnesses were recalled after an adjourned hearing to give further evidence. This constituted a precedent in Mr. Hickey's submission for his present application.

Mr. O'Shee opposed this application. He said the appellant had completed his evidence at the previous hearing. He said the case for both sides had concluded when Mr. Sheridan had given his evidence. All that remained to be done was for both sides to make legal submissions.

In further remarks Mr. Hickey said the new material was rebuttal evidence and that as the hearing was still in being, it was appropriate to admit it as evidence.

In a reply Mr. O'Shee admitted he was not prejudiced by the new evidence but he maintained his objection to its admission as it was a piece of late rebuttal evidence.

The Tribunal retired to consider this matter.

The Tribunal decided to adjourn the matter for a further hearing. The Tribunal directed that Mr. Davenport prepare a statement of evidence to be given to the Tribunal as to why he had not obtained this new evidence in time for the initial hearing. This statement was to be exchanged with the Respondent and given to the Tribunal pursuant to the usual guidelines. Additionally the Tribunal directed that statements of the legal argument to be used by the appellant and the respondent at the adjourned hearing be sent to the Tribunal.
The hearing resumed on 25th February 2000. Prior to the resumed hearing, the Tribunal wrote two letters to Mr. Davenport, one dated the 17th November 1999 and the other dated 10th February 2000. Mr. Davenport replied to these letters on 9th December 1999 and the 17th February 2000. The purpose of the Tribunal in writing these letters was to obtain further details of the archiving process used by the appellant's agent for material documents.

Mr. Davenport continued his sworn testimony. He said he had carried out extensive research in the preparation of his written submission. This had included a morning at the Marks and Spencer archive at the South Circular Road in Dublin. He had also requested Ms. Fitzpatrick to provide him with relevant information.

Mr. Davenport then explained how he had obtained the new evidence. Ms. Fitzpatrick had forwarded to him information about a rates refund with respect to 16/17 Lower O'Connell Street. This application had occurred in the early 1990's. As a result of that information Mr. Davenport went to Lisney's external archive located at Camden Row, Dublin. He located the rates file there and from it extracted the new evidence, which it was proposed to put before the Tribunal. Finally, Mr. Davenport said he had forgotten the rates refund application in 1993.

Under cross-examination by Mr. O'Shee, Mr. Davenport said he assumed that only the rate collector for O'Connell Street would have been involved in a rates refund for that area.

Ms. Fitzpatrick continued with her sworn testimony. She said prior to the first hearing she had made extensive searches for material for the Tribunal hearing during the normal working week of Monday to Friday. These searches were within the constraints of her other work duties.

After the initial hearing she went into her office on a Saturday. In the course of her searches she found the information which she then sent to Mr. Davenport.

Under cross-examination by Mr. O'Shee, Ms. Fitzpatrick said the information she obtained was in an old rates file in her office. She added that the file was not located in her immediate office.

In a further reply to Mr. O'Shee, Ms. Fitzpatrick said the reason she did not locate the rates file during a normal working week was because she did not have enough time. Going into her office on a Saturday gave her the time to devote solely to a search through the files.

In reply to a question from the Tribunal, Ms. Fitzpatrick said she was assisted on her Saturday search by her secretary.

In reply to another question from the Tribunal, Ms. Fitzpatrick said that documents she had obtained for Mr. Davenport were in existence for a time period longer than the six-year retention period for documents operated by the appellant.

In his legal submissions as to the admissibility of the new evidence. Mr. Hickey said the pre-hearing written submissions to the Tribunal were analogous to pleadings. Under the Rules of the Superior Courts pleadings may be amended at any stage of the proceedings. Mr. Hickey said the appellant's application to prove certain documents was therefore in the nature of amending pleadings. Therefore the Tribunal should receive the new evidence.

Mr. Hickey said it was difficult to find legal authority in relation to the calling of a witness by a party when that party's evidence had been concluded. The only case he had found was Riordan –v- O'Shea, High Court (1926) 60 I.L.T.R. 61. This was a Circuit Court appeal heard in the High Court. The plaintiff in the Circuit Court had sought to call rebutting evidence on matters

put in evidence by the Defendant. The application was refused by the Circuit Court judge. On appeal the High Court found the decision of the Circuit Court judge to be erroneous.

Mr. Hickey said Riordan –v- O'Shea decided that a plaintiff had a right to give rebuttal evidence when the burden of proof of an issue is on the defendant. Here the burden of proof was on the Respondent. Mr. Hickey said the authority for this was *John Pettitt & Son Ltd. –v- Commissioner of Valuation – VA95/5/015*.

Again the "guidelines for the hearing of appeals" by the Tribunal stated that "it is envisaged that in general, hearings will be as informal as possible". Mr. Hickey cited a recent hearing at the Tribunal in which he appeared for the appellant. This was the case of *Reid Furniture (Ireland) Ltd. –v- Commissioner of Valuation – VA99/2/006*. In that case there was, after the conclusion of a hearing, the recall on one witness and the calling of a second witness *de novo* by the Commissioner of Valuation.

Mr. Hickey referred to the case of Allied Irish Coal Supplies Ltd. –v- Powell Duffryn International Fuels Ltd. (1998) I.R. 519.

This case set down three criteria for calling new evidence on appeal. The criteria were:

(a) that in order to adduce fresh evidence in an appeal the evidence must have been in existence at the time of the trial but unobtainable with reasonable diligence for use at the trial.

(b) it must probably have had an important, though not necessarily decisive, influence on the result of the case.

(c) it must be apparently credible though not necessarily incontrovertible.

In relation to the second test Mr. Hickey said it could not be applied here unless the evidence was not heard by the Tribunal. Mr. Hickey said it would be his submission that the evidence

adduced by the appellant before the Tribunal was sufficient for it to prevail. However, if the appellant failed to have the new evidence admitted, then on appeal to the High Court on the ground that evidence not heard ought to have been heard, that in those circumstances the second test would be operative. Mr. Hickey said test number one and number three were satisfied with respect to the new evidence.

Mr. Hickey cited two further authorities, which he had not included in his written legal submissions. They were, Ketteman and others -v- Hansel Properties Ltd. (1988) 1 ALL ER, 38 and Charlesworth -v- Relay Roads Ltd. (in liquidation) and others, (1999) 4 ALL ER, 397. Both of these cases dealt with the amendment of pleadings. In the first case an amendment was sought at the end of the trial. In the second case the amendment was sought after judgment.

With regard to the first case Mr. Hickey referred to part 4 of the holding at page 39. He also referred to the last paragraph on page 48 continuing to the second paragraph of page 49. Mr. Hickey also referred to page 55 of the judgment on the last paragraph. Again he referred to the last paragraph on page 61.

Mr. Hickey referred to three items in connection with his second case. Firstly, he cited the headnote at page 397 (e and f). Secondly, he referred to page 404 (c, d and e). Finally, Mr. Hickey referred to page 417 of the judgment.

In reply to the Tribunal as to the necessity of a prompt application when seeking to call rebuttal evidence as specified in the Riordan case Mr. Hickey agreed the application was not promptly made at the hearing but the application was made promptly in the sense that it was made when the new information became available.

In reply to a question from the Tribunal about how it could evaluate the new evidence for the purposes of the second test in Allied Irish Case Supplies Limited, Mr. Hickey said that if he made a submission that the new evidence was compelling then the implication was that his previous evidence was not compelling. He was not prepared to make a submission of this nature.

In a further reply on this matter, Mr. Hickey said the new evidence goes to the conclusiveness of his case not to whether the case would stand or fall.

In his legal submissions as to the admissibility of the new evidence Mr. O'Shee said Rule 7 of the Rules of the Tribunal described the written submissions to the Tribunal as summaries of evidence and distinguishable therefore from pleadings.

As to the three tests in Allied Irish Coal Supplied Limited, Mr. O'Shee conceded the new evidence satisfied the third test. The other two tests were not satisfied by the new evidence.

In reply Mr. Hickey said the important and decisive nature of the new evidence was that it showed irrefutably that the appellant had vacated 16/17 Lower O'Connell Street in 1993. This was the effect of the documents about the rates repayment to the appellant for 16/17 Lower O'Connell Street in 1993.

The Tribunal retired to consider the admissibility of the new evidence. The Tribunal decided not to admit the new evidence for the following reasons.

The written submissions to the Tribunal are summaries of evidence and not pleadings. Therefore Mr. Hickey's argument that the admission of new evidence is analogous to the amending of pleading fails. The two authorities cited by Mr. Hickey, Ketteman and others –v- Hansel Properties Ltd. and Charlesworth –v- Relay Roads Ltd. (in liquidation) and others deal with the amendment of pleadings. Accordingly, they do not apply to the facts in this case.

As to Riordan –v- O'Shea the High Court decided it is in the discretion of the judge at the hearing to say whether a witness can be recalled. Additionally the application must be made promptly. The High court found that the application was promptly made at the Circuit Court hearing. In this appeal, Mr. Hickey did not make the application promptly at the Tribunal hearing to call the rebutting evidence. Therefore Riordan –v- O'Shea does not apply to the facts of this case.

The facts in the case of Reid Furniture (Ireland) Ltd.-v- Commissioner of Valuation are distinguishable from the facts in the present appeal. In the former case the appellant and the respondent agreed as to the type of evidence to be given by the re-called witnesses. The witnesses were then recalled on the basis of agreement between the parties. In this appeal the respondent is vigorously opposing the recall of a witness. This case cannot aid the appellant.

As to the case of Allied Irish Coal Supplies Limited, this deals with the introduction of new evidence on appeal and is therefore distinguishable from the present appeal which is the initial *quasi-judicial* hearing of this matter. In any event the Tribunal considers that the appellant has failed to satisfy the first two tests in the case. On the basis of the evidence heard by the Tribunal it considers that the appellant with its great resources did not exercise reasonable diligence in procuring evidence for the first hearing before the Tribunal. As to the second test Mr. Hickey submitted that at the first hearing he had adduced sufficient evidence to prove his case. As a consequence the new evidence would probably not have an important influence on the result of the case.

Mr. Hickey then made legal submissions on the notification issue.

Mr. Hickey referred to Ambrose Cuddy v Commissioner of Valuation, VA97/2/030, page 5, paragraph 6 (a) shows that the onus of notification is on the respondent. Page 6, paragraph 7 (c) shows that the principle of imputed or constructive knowledge applies. Dublin Corporation ought to have known about the Mary Street address of the appellant. A statement starting at the bottom of page 7 shows that knowledge to one department of the Corporation is knowledge to another department. Mr. Hickey cited the fact that the Grafton Street rate collector knew about the Mary Street address. Mr. Hickey also referred to page 8 of the judgement at Section C.

In his legal submission on the notification issue, Mr. O'Shee said that Section 3 (4)(a) of the 1988 Act does not impose a strict liability. The notification under the statute is distinguished from statutory provisions governing service on companies and individuals. These acts prescribe the manner (registered post) and the place where notice is to be served.

Mr. O'Shee said the facts showed that Dublin Corporation received notice from the appellant in 1988 to direct mail to 16/17 Lower O'Connell Street. Subsequently the Corporation sent all correspondence to this address. The Corporation did not receive any notice from the appellant to direct mail to 24/29 Mary Street.

Up to 26th August 1998 the rates for 24/29 Mary Street were paid by the appellant on the foot of demands sent to 16/17 Lower O'Connell Street. The rating authority were entitled to rely on this course of conduct by the appellant.

Mr. O'Shee referred to A.I.B. Investment Manager Limited v Commissioner of Valuation VA94/3/006. The Tribunal decided therein that failure to notify the appellant was not fatal where reasonable steps were taken to notify.

The Tribunal has considered the written submissions, the oral and documentary evidence, and the legal submissions offered by the appellant and the respondent.

In arriving at its determination the Tribunal has to evaluate the evidence relating to certain key events.

The first event is the appellant's assertion that it issued a redirection notice to An Post and a letter informing Dublin Corporation of its change of address in 1991. The appellant could not produce any documentary evidence to support this assertion. On the other hand the respondent denied it had received any notification from the appellant. Additionally the respondent had in its possession a letter going back to 20th January 1988 showing that the appellant requested that mail should be sent to 16/17 Lower O'Connell Street.

The Tribunal is unable to resolve this conflict of evidence in favour of the appellant. The Tribunal therefore finds that the appellant did not inform the respondent of a change of address in 1991.

The next key event relates to the respondent's assertion that the appellant issued a re-direction order to An Post for three months in May/June 1996. Mr. Joe Sheridan, an employee of An Post, gave evidence about this. He referred to a ledger kept by An Post, which recorded this re-direction. Mr. Hickey rightly observed this was hearsay evidence. The Tribunal notes that Mr. Hickey made no application to have the contents of this ledger formally proved as he had made at the first hearing to have the contents of Mr. Sheridan's letter formally proved.

Hearsay evidence is not lacking in probative value. The Tribunal finds on the balance of probability that this evidence produced by the Respondent shows that the appellant redirected mail from 16/17 Lower O'Connell Street to 24/29 Mary Street for three months in May/June 1996.

The next key event was the posting by Dublin Corporation of the relevant notice of revision to the appellant at 16/17 Lower O'Connell Street on 3rd September 1996. The Corporation proved this posting by documentary evidence to the satisfaction of the Tribunal. Again the Corporation had no record of this notice being returned and the appellant did not contest this matter.

Again it was uncontested between the parties that in 1997 and 1998 rate demands for 24/29 Mary Street were sent to 16/17 Lower O'Connell Street. The said rates were then paid promptly by the appellant.

The Tribunal finds that the appellant's directions, conduct and representations between 1991 and 1998 induced the respondent to rely on the fact that the appropriate address for rating purposes for 24/29 Mary Street was 16/17 Lower O'Connell Street. The Tribunal finds in the circumstances that the respondent has shown sufficient compliance with Section 3 (4) (a) of the Valuation Act 1988.

The Tribunal therefore dismisses the appeal herein and affirms the decision of the Commissioner of Valuation in fixing a rateable valuation of £7,000 on the subject hereditament.