Appeal No. VA99/3/042 & 043

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Dublin Corporation (Rates Office) **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Carpark at Lot No. 33-34a, (incl. 10 James Place), Mount Street Upper, Townland: Sundry Townlands, Ward: South Dock, U.D. South Dock, County Borough of Dublin and,
Building ground at Lot No. 35a, Mount Street Upper, Townland: Sundry Townlands, Ward: South Dock, U.D. South Dock, County Borough of Dublin.

B E F O R E

Liam McKechnie - Senior Counsel	**Chairman**
Ann Hargaden - FRICS.FSCS	**Member**
Rita Tynan - Solicitor	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 14TH DAY OF JUNE, 2000

By Notices of Appeal dated the 5th day of August, 1999, the appellant above named appealed against the determinations of the Commissioner of Valuation in fixing rateable valuations of £200 and £0.00 on the above described hereditaments.

The grounds of the Appeal as set out in the said Notices thereof are that firstly "the Rating Authority did comply with section 3 (4)(a) of the Valuation Act 1988 and therefore the Revision Valuation of £3,260 should be re-instated and secondly in any event the revision valuation of £3,260 is understated".

This Appeal proceeded by way of an Oral Hearing, which took place, at the Tribunals Offices in Dublin on the 14th day of April 2000. Mr. Paul Coughlan B.L. appeared on behalf of the Appellant namely, Dublin Corporation. Mr. Owen Hickey, B.L. instructed by Messrs Matheson Ormsby & Prentice appeared on behalf of that firm which was a Notice Party to this Appeal. Mr. Brendan Conway, B.L. instructed by the Chief State Solicitor appeared on behalf of the Commissioner for Valuation. In accordance with practice, prior to the commencement of this hearing, the parties had exchanged their respective précis of evidence and had submitted the same to this Tribunal. Having taken the Oath oral evidence was given, firstly by Mr. Patrick J. Doyle, a Rate Collector and secondly, by Mr. Ayton an Assistant Principal Officer in the Rates Department, both from Dublin Corporation. Ms. Holmes gave evidences on behalf of Messrs. Matheson Ormsby & Prentice. Submissions were then made both as to fact and law. Judgment was reserved.

3. Section 3(4) of the Valuation Act, 1988 reads as follows:

(a) "Where an application under subsection (1) of this Section in relation to any property is made by any person other then the owner or the occupier of that property the owner and occupier, if known, should be notified by the rating authority of the application.

(b) The owner and occupier, where known, shall be notified by the rating authority of the determination of the application and of his right to appeal in accordance with Sections 19 and 31 of the Act of 1852 against the valuation determined by the Commissioner of Valuation and shall also be notified by the rating authority of the outcome of that appeal".

It can immediately be seen that the requirement under Section 3(4)(a) applies when any hereditament has been listed for revision whereas the requirement under subparagraph (b) comes into effect only after a decision on that revision has been made.

4. Two issues were raised in this appeal by the documentation as submitted. Firstly whether or not Section 3(4)(a) of the aforesaid Act had been complied with and secondly whether the Rating Authority could withdraw Ground No. 2 of its Grounds of Appeal as contained in the Notice thereof. This second issue has a factual context of its own but is one, which it is not necessary to decide in this Judgment as the Parties have agreed that further consideration thereof can be deferred pending the Tribunal's determination on Issue No. 1. Accordingly the sole matter for our decision is the application of Section 3(4)(a).

5. The following facts, which emerged as being both relevant and material to this appeal, are not either in essence or in substance, in dispute between the parties. These are as follows:

1996	A number of newspapers carried, as a property news item, the information that Messrs. Matheson Ormsby & Prentice (M.O.P.'s) intended to relocate from Burlington Road to a new office block at Herbert Street.
25/09/97:	A certificate of practical completion issued in respect of this new office block.
09/97:	This new property was occupied by MOP's but only for the purposes of fitting out the interior. Under the terms of the Agreement with the Developer a rent-free period of five months was given for this purpose.
09/97/ 10/97	During these months, on two occasions, Mr. Doyle as part of his duties and functions as a Rate Collector, observed that a new building at the rear of No. 33/34a, (including 10 James Place) and 35a, Mount Street Upper was in the course of construction. He was aware from previous knowledge that the original building had been knocked and that, for a certain period

the vacant site had been used as a car park, which incidentally had an RV of £200 placed thereon.

12/97: Mr. Doyle once again saw or inspected this new building and on this occasion observed its near completion state. He made a decision to list it for revision.

15/01/98: Notices appeared in both the Irish Times and the Irish Independent indicating that MOP's would move to 30, Herbert Street on the 19th of January 1998.

19/01/98 MOP's formally open for business at its new address.

30/01/98: The Rate Collector fills out an R2 Form and submits the same to the Rates Department.

10/02/98: This form, which is attached to this Judgment as Appendix 1, was duly signed by or on behalf of the Deputy Finance Officer and Treasurer and was hand delivered to the Commissioner of Valuation. Therefore it can be observed that the lot nos. were given as 33/34a and 35a: that the street was named as Mount Street Upper, that Lanaree Limited was given as the immediate lessor, that the Tenement was described and the existing valuation of £200.00 referred to and then under the heading of "nature of revision requested," it was stated: "Revise as necessary value new office block on rear of 34, 34 and 35 Mount Street Upper, Carparking at 35, 36 James Place, East. Developer: Lanaree Ltd. c/o Rohan Group Ltd., The Treasury Building, Lower Grand Canal Street, Dublin 2". Furthermore it should be noted that only one of the eight columns listed, had no entry. This column, which was

no. 4, was headed "occupiers". No name or other identification was given.

02/03/98: By letter of this date, with an address at 30, Herbert Street, Dublin 2, MOP's wrote to the Rates Department of Dublin Corporation informing them that they had relocated from their old premises at Burlington Road on the 22nd of January 1998 and they also enclosed a cheque for the amount of rates due for that rating year.

05/04/98: A receipt with a rate number, 373/0614/000 was sent by Mr. Doyle to MOP's on this date.

25/02/98: Dublin Corporation send to Lanaree Limited a notice in purported compliance with Section 3(4)(a) of the Valuation Act, 1988. In fact two such notices were served, as at that time there were two separate hereditaments in existence.

01/04/98: These notices were posted.

09/11/98: The Valuation list issued. Having amalgamated the lot numbers and having placed a total RV of £3,260.00 thereon, this list shows the Lessor as Lanaree Limited with the occupier being MOP's.

23/11/98: On this date a notice in purported compliance with Section 3(4)(b) of the aforesaid Act of 1988 was issued to Lanaree Limited.

23/11/98: On this same date a similar notice issued in favour of MOP's.

24/11/98: Both of the aforesaid Notices were posted.

27/11/98: The said Notice addressed to Lanaree Limited was returned by An Post to Dublin Corporation. The said Notice addressed to MOP's was not so returned and it is accepted by all parties that the same was received by this firm of Solicitors.

03/12/98: On this date Messrs. Palmer McCormack wrote to Dublin Corporation, referred to No. 30, Herbert Street in the context of the revised list, which had issued in November 1998, and indicated, on behalf of MOP's, an intention of appealing the RV of £3,260.00. The grounds of such Appeal, as elaborated on in correspondence included an assertion firstly that Section 3(4)(a) of the 1988 Act had not been complied with in that no notice was served on MOP's and secondly, that in any event without prejudice, the RV of £3,260.00 was excessive.

04/12/98: This said Letter of Appeal was received by Dublin Corporation.

07/12/98: On this date a phone call took place between Theresa Crowley of the Rates Department and Messrs. Palmer McCormack. As a result a letter of even date issued to Dublin Corporation. It confirmed that 33/34a, 35a of Mount Street Upper were known as 30, Herbert Street.

06/07/99: The Commissioner issued the results of this first Appeal. Having duly considered the evidence before him, the said Commissioner upheld the submission made on behalf of MOP's and found that notification had not been given to them under Section 3(4)(a) of the 1988 Act. Accordingly he struck out the revision and reinserted the former valuations of £200.00 and £0.00 on the lot numbers above mentioned.

05/08/99: Dublin Corporation, as the Rating Authority, appeals to this Tribunal and does so on the two grounds mentioned at paragraph 1 above.

6. In addition to the above the following evidence was also given:

(a) Ms. Holmes, a Solicitor in MOP's, having referred us to the news items carried in the National Newspapers in 1996 and to the advertisements carried on the 15th of January 1998, informed this Tribunal that in the summer of 1997 a sign, with a height of about six feet and the width of about eight feet was erected in a prominent position on the street side of the new office block which sign had the following inscription on it namely "prestigious new headquarters for MOP". This sign remained as originally located until in or about the weekend immediately preceding the 19th of January 1998. In addition she told us that for a considerable period of time there was also a large sign in a prominent location located on the old building with this sign indicating that MOP's intended to move to larger premises and that their existing accommodation was available for letting. This evidence so given, which we accept, was not in any significant way challenged.

(b) In 1993/1994 resulting from an inspection, the Rates Department of Dublin Corporation, including or else in the person of Mr. Doyle, became aware that the rear of 33/34 Mount Street Upper had been sold off by Chapman Flood, who at that time were the owners/occupiers of the house at the front, and that the said rear section had in part some buildings on it but elsewhere it constituted a vacant site. Of more significance however was Mr. Doyle's evidence to us that in September/October 1997 and again in December 1997, as part of his duties and responsibilities during and within the course of his employment with Dublin Corporation, he personally, in a physical way, saw this new office block. As he was walking the street, during the course of the December inspection/sighting, he formed the intention to list this building for revision as in his opinion it was at that time nearing completion. Notwithstanding this proximity however he also gave

evidence that he did not see and/or has no recollection of noticing the sign above mentioned and that he was not personally aware of MOP's occupation of this building until sometime shortly after the revised list issued in November 1998. Though he was not in a position to explain why he did not see or remain conscious of this sign, nonetheless there was no reason to doubt the veracity or accuracy of his said evidence and accordingly we so accept it. Finally, as to his workload in this specific area, he told us that the Rates Section had 3 revisions in January 1998, and in the month following had about 70 revisions.

(c) Mr. Ayton, the Assistant Principal Officer was also called and did give evidence of the system adopted by Dublin Corporation in carrying out their functions as a Rating Authority. In general the Corporation had two methods by which they could acquire knowledge as to the actual occupation of a rateable hereditament. The first was via the Rate Collector who has a specific duty when going through his area to look out for and notice buildings both during the course of construction and when completed. The second method was by members of the public who, without obligation would inform the Corporation of a change in ownership/occupation. In either of these circumstances the Rate Collector would probably raise an R2 form and when other formalities were completed, would have that document passed on to the Commissioner of Valuation.

(d) In May/June 1999 this system was changed in the sense that added steps and further precautions were taken in order to identify the relevant occupier. In the first instance the Planning Department would send a copy of all "Commencement Notices" to the rating section, which Notices would of course provide most useful information as to the identity of the occupier and the date of occupation. Secondly when an R2 form was so raised, in draft form, and when no name or identity was given in the column headed "occupiers", the rating section would send out an Inspector who would physically inspect the property in question. He could then ascertain whether it was unoccupied or occupied and also whom the occupier was. In this way having ascertained the name of such a person or firm

the relevant notice was duly served. Finally, he told us that Dublin Corporation collected almost £20 million in 1998 via the Rating System.

Once again, this evidence in substance remained unchallenged

7. As can be seen from the aforegoing the factual situation then is as follows:

(a) In 1996 certain relevant news items were carried in national newspapers.

(b) In September 1997 the new office block was practically complete and physical occupation was assumed by MOP's this for the purposes of a five-month fitting out exercise.

(c) On the 19th of January 1998, following notices in the public press some days earlier, MOP's formally opened for business in this new building. That date was 11 days prior to the Rate Collector raising the R2 form, was 21 days prior to the actual date of the form and was almost five weeks prior to the notice intended for Lanaree Limited being drafted and was almost three and a half months prior to the 1st of April when such Notice was posted. Moreover it was almost 10 months prior to the issue of the revised list.

(d) For almost a seven-month period, which included the months of September, October and December 1997, there had existed in a prominent position on this new building a sign indicating the name of the intended occupiers, which of course was MOP's.

(e) The Rate Collector had not on any of his three admitted visits/inspection of the area noticed or else could not recall noticing the aforesaid significant sign.

(f) That no Section 3(4)(a) notice was in fact served on MOP's,

(g) That a large sign likewise existed on the Burlington Road property which was also within Mr. Doyle's area and that when paying rates on this Building in March 1998 the letterhead of MOP's had the address of "30, Herbert Street", and finally

(h) It was only by post on the 9th of November 1998 that the Rating Department realised MOP's occupation of this new building notwithstanding the fact, as is evident from that revised list, that the Commissioner was aware of such occupation at least for some time prior to its issue.

8. Against this background it was submitted on behalf of Dublin Corporation that compliance with Section 3(4)(a) was directory and not mandatory, that the words "if known" contained within that subparagraph, should be equated with actual knowledge only and that the since the evidence showed that actual knowledge existed only after November 1998, there was not, on the part of the Rating Authority, any non-compliance with this said provision. Hence the conclusion that the Commissioner's decision at first appeal stage should be reversed and the rateable valuation of £3,260.00 reinstated on these subject hereditaments. Submissions to the contrary effect were made by both the Commissioner and the Ratepayer.
On their behalf it was urged upon us that the true and proper interpretation of this subsection had been dealt with in several judgments of this Tribunal and that in its considered view these statutory provisions must be complied with. In addition it was claimed that both individually and collectively there were several pieces of evidence, which lead inescapably to a conclusion that the rating authority knew or ought to have known of MOP's occupation in this new hereditament and furthermore knew or ought to have known at a time when compliance with these statutory provisions was still possible. In such circumstances it is claimed that the decision of the Commissioner at first Appeal was correct and should be so upheld by this Tribunal.

9. In paragraph 24 et seq., of the Judgment in the case of **John Pettitt & Son Limited -v- The Commissioner for Valuation**, issue date the 13th of October 1997, this notification point was dealt with, and having referred to the 1852 Act, to several Judgments delivered

between 1990 and 1996 and to the Supreme Court decision in **Kinsale Yacht Club -v- Commissioner for Valuation 1994 1 ILRM 457**, this Tribunal at paragraphs 31 and 32 thereof, summarised the general principles which emerged from these sources and which represented the considered views of this body. *Interalia* the said Judgment decided:

(a) That compliance with Section 3(4)(a) was mandatory,
(b) That the onus of proving compliance was on the Respondent/Rating Authority,
(c) That non-compliance resulted in the revision being declared invalid,
(d) That the words "if known" were not restricted to actual knowledge but carried with them knowledge which would have been acquired from the taking of reasonable steps and the making of reasonable enquiries to ascertain the identity of any given occupier and,
(e) That compliance with Section 3(4)(b) was not a substitute for and could not remedy non-compliance with Section 3(4)(a).

In our opinion this issue was correctly decided in Pettitt's case and accordingly it is our intention to both follow and apply the thus established views of this Tribunal.

10. In support of the submission that the relevant sub-section places no obligation on a rating authority to take any steps or carry out any searches, so as to ascertain the identity of an occupier, Mr. Coughlan referred us *interalia* to the case of **Bank of Ireland –v- Rockfield Ltd. [1979] I.R. p21.** In that case the issue for the courts determination, as identified by the trial judge, appears at p26 of the report wherein it is stated "*the case thus seems to be reduced to the questions whether the agreement entered into by the borrowers was ratified by the defendant and, if so, whether the agreement, so ratified, was voidable under the provisions of the Section 60 of the Act of 1963"*. This Act was the Company's Act of that year. On page 28 the Trial judge refers to a well-known passage from the decision of Lindley L.J. In the case of **Manchester Trust –v- Furness [1895] 2 QB 539**, which passage, as quoted, is as follows; "*as regards the extension of the equitable doctrines of constructive notice to commercial transactions, the Courts have always set their faces resolutely against it……. The equitable doctrines of*

constructive notice are common enough in dealing with land and estates, with which the Court is familiar; but there have been repeated protests against the introduction into commercial transactions of anything like an extension of those doctrines, and the protest is founded on perfect good sense. In dealing with estates in land, title is everything, and it can be leisurely investigated; in commercial transactions possession is everything, and there is no time to investigate title; and if we were to extend the doctrine of constructive notice to commercial transactions we should be doing infinite mischief and paralysing the trade of the country".

Whether the reasons advanced in this passage as a justification for restricting the doctrine of constructive notice are valid in today's commercial and technical world is doubtful, nevertheless it is quite clear that what was under consideration by Lord Lindley was the extension of the doctrine to commercial transactions and nothing else. Even therefore if the principle enunciated by him continued to apply at the present time, it would have no application to the subject matter of our decision. Furthermore in the instant Bank of Ireland case, the issue turned specifically on the interpretation of Section 60 (14) of the 1963 Act and accordingly it could have been an authority for no proposition other than that inherent in the subsection itself.

11. This being the situation a review of the evidence is now called for in order to identify facts, matters or circumstances, of a credible and sustainable nature, (if the same exists) from which it can be concluded or inferred that Dublin Corporation knew, in the manner indicated above, the identity of the occupiers of this office block and did so in sufficient time so that the notice envisaged under Section 3(4)(a) could and should have been served on MOP's. Disregarding for a moment the inspections carried out by Mr. Doyle in September and October 1997 and in December 1997, both the Commissioner and the Notice Party have identified several segments of evidence which in their submission meant that Dublin Corporation knew of MOP's occupation not later then say March 1998. These included, firstly the news items in 1996, secondly, the sign placed on the Burlington Road property indicating MOP's intention to relocate, thirdly the information Notices published in the National Press on or around the 15th of January 1998, fourthly,

the letter from MOP's, to the Rating Section, dated the 2nd of March 1998 and finally given the move from Burlington Road in January of that year. They point out that a simply enquiry, anywhere, given the national and international reputation of MOP's, would have confirmed their relocation to the subject hereditament or at least would have identified circumstances leading to that same conclusion.

12. In our opinion while a good deal of force is contained within this submission, nevertheless as the sources for this information are varied and diverse, are separated by lengthly periods of time and since one cannot assume or impose a duty to scan national newspapers, it would be incorrect in our view to rely upon the aforegoing as establishing the basis of knowledge within the meaning of Section 3(4)(a). Furthermore some confusion undoubtedly existed between Mount Street Upper and Herbert Street. Why this should be so is not altogether clear as from a copy of the Ordinance Survey Map submitted to us both the identification and location of Mount Street Upper and Herbert Street are perfectly clear. However and not withstanding this, uncertainty did prevail and accordingly we do not propose to rest our decision on these rather diffuse sources of information.

13. The inspections in September, October and December 1997 are however in our view quite different. There is no doubt in our opinion that Mr. Doyle knew of the existence of this significant free standing structure, that he knew of its location whether the address be Mount Street Upper or Herbert Street, that it was in December almost complete, that it was an office block and that it was intended to be used as such. Furthermore we are quite satisfied, in accordance with Ms. Holmes evidence, that the sign, above mentioned, was sited in a strategic place during all three visits and that it was both conspicuous and its wording intelligible to any member of the public from several positions on the adjacent public footpath. Given the duties and the responsibility of a Rate Collector, which included, in particular, the identification of new buildings for the purposes of having the same listed for revision and thus valued, we are quite satisfied that Mr. Doyle could have and should have both seen and observed the sign on any of the visits herein mentioned. If he had then the identity of the occupier would have immediately become known. That

information would have accordingly been available not later then December 1997 and thus forwarded to the Rating Authority: giving every opportunity of complying with the provisions of Section 3(4)(a). For whatever reasons, as above stated, Mr. Doyle cannot recall seeing this sign or remaining conscious of it. That in our opinion cannot be excused or overlooked, this, of course in the context of legal proceedings and not in any personal way towards Mr. Doyle. In these circumstances we have no doubt but that the Corporation should be fixed with the knowledge of the identity of the occupiers in the time frame above mentioned and accordingly given the admission that no Section 3(4)(a) notice was served on MOP's, the result in our view is that the revision is invalid and the decision of the Commissioner given at first appeal correct.

14. During the course of the Hearing it was suggested that to so interpret Section 3(4)(a) would be to place an unreasonable burden on the Rating Authority. This submission is not born out by the evidence so tendered. It will be recalled that Mr. Doyle informed us that three revisions took place in January 1998 and a substantially greater number, in all about 70, in the month following. The evidence of Mr. Ayton will also be recalled and in particular a portion thereof which identified the new system, which commenced in May, June 1999. That was to the effect, that when a draft R2 form was filled out which had no occupiers named thereon, an inspector physically went to the hereditament in question. It was only when this omission existed that this additional requirement was carried out or indeed needed.

Whilst no specific evidence was given as to what percentage of the revisions carried out in say January and February 1998 had this omission, nonetheless we are satisfied that such occurrences are rare and involve only a minimal inconvenience, namely the requirement of inspection. If as a result of such a visit it is not possible to identify an occupier then that may well be a deciding factor in adjudicating upon compliance or non-compliance with Section 3(4)(a). It is in our view a small price to pay for the operation of a system which we were informed resulted in Dublin Corporation collecting about £20 million in the rating year of 1998. Accordingly this submission is rejected.

15. In further submissions Mr. Coughlan, as part of his argument, sought to persuade us that even if Section 3(4)(a) was mandatory the words "if known", should be confined to actual knowledge and that the concept of notice in any form had no part to play in the correct interpretation of these words. To this part of his submission we now turn.

16. In interpreting legislation the courts adopt a number of cannons or rules of construction. These are supported by a number of presumptions and maxims. Both are regarded as being general in nature with a wide variety of choice available so that such flexibility can best be used in any given case to achieve the primary if not the sole aim of statutory interpretation, namely the true, and if possible undisputed, intention of Parliament. Traditionally, approaches were categorised, usually being described by reference to rules namely the Literal rule, the Golden rule and the Mischief rule, all of construction. In recent times others were added including the Schematic or Teleological approach. No doubt more will follow. Special rules exist and new ones repeatedly identified to cover the vast and expansive area of law peculiar to that subject matter on any given occasion. The topic is so technical, difficult and ever changing that what were once the general rules are now in many instances the exceptions to the exception to the general rule. This is why specialist text books exist. See for example Craies on Statute Law, Maxwell on the Interpretation of Statues, Benien on Statutory Interpretation, Cross on Statutory Interpretation and others. That is why it would be impossible and indeed inappropriate in this judgment to deal with this topic in any more extensive way than that which is absolutely required for the purpose of deciding the issue before us.

17. It is sufficient therefore to state the following and even in so doing to remain mindful of the generality of such remarks.

(a) In ascertaining the true meaning of a statutory provision and thus identifying the intention of the legislature, primacy of importance is given to the words used.

(b) Where such words are clear, precise and definite in meaning the courts will usually interpret them literally and in their ordinary and natural meaning. See **Howard -v Commissioner of Public Works [1994] I I.R. 101**.

(c) The Courts may not add to the text or extend its provisions no matter how desirable or just that might be. Otherwise such intervention would constitute the invasion by the judiciary into the powers and function of the legislature and this would be a plain breach of the constitutional separation of powers. See **McGrath –v- McDermott [1988] I.R. 258.**

(d) Though *prima facie* words are given their ordinary meaning nonetheless if this leads to a absurdity, or an inconsistency or a repugnancy the courts, if possible can modify such words so as to remove this absurdity, inconsistency or repugnancy. See **people (Attorney General) –v- McGlynn [1967] I.R. 223,**

(e) The context in which the affected words are used as well as the title and all of the other provisions of the Act may be consulted in any exercise of statutory interpretation, though in taxation statutes this may not occur.

(f) The object, purpose and general scheme of the Act may be considered, this being the schematic approach. See **Frascati Estate Ltd. –v- Walker [1975] I.R. 177 and Nestor –v- Murphy [1979] I.R. 326.**

(g) If words are unclear, ambiguous or lack certainty the courts can invoke whatever rule is best suited to achieve the ultimate object,

These are but some of the more general rules.

18. In addition could we refer to **Kinsale Yacht Club –v- Commissioner of Valuation [1994] ILRM 457.** That case dealt with the construction of Section 2 of the 1986 Act, which Section inserted a new schedule into the 1852 Act, which in turn had the effect of specifying new categories of fixed properties, which therefore should be rated. The issue for the courts consideration involved the interpretation of this schedule and the correct method of construction. At p462 Finlay C.J. giving the judgment of the Supreme Court said:

I. "The submissions made on behalf of the club as to the strict interpretation of this statute on the basis that it had the same characteristics as a taxation statute relied in part on the statement of Henchy J. in the case of **Inspector of Taxes –v-**

Kiernan [1982] I.R. 13 wherein delivering a judgment, which was the agreed judgment of this court, at page 15 of the report he stated as follows;

"Secondly when a word or expression is used in a statute creating a penal or taxation liability then if there is looseness or ambiguity attaching to it then it should be construed strictly so as to prevent the fresh imposition of liability from being created unfairly by the use of oblique or slack language. I am satisfied that this statutory provision in the 1986 Act cannot of course with any precise use of words be described as either a taxation or penal statute. It does however, having particular regard to the phrase used in Section 2 of the 1986 Act, that categories of fixed property specified in the schedule, inserted by that Act shall be deemed to be rateable hereditaments in addition to those specified in Section 12 of the Act of 1852, constitute a platform or necessary statutory precondition intended to lead to fresh imposition of liability in the meaning of those words as contained in the judgment of Finchy J. I see no logical reason therefore why these statutory provisions should not receive from the Court a strict interpretation referred to in that judgment".

19. So in a statute of the type above referred to, any looseness or ambiguity attached to the words or phrases should be strictly construed so as to prevent the imposition of fresh liability. Whether that method of approach should also apply to Section 3(4)(a) is not an issue which we have to determine, but unless a distinction could be made between provisions of a procedural nature and a substantive nature it is difficult to see or understand how a different method of construction could be used for different sections of the same code dealing with the same subject matter.

20. In any event assuming therefore that we must interpret the relevant words in accordance with the above cannons of construction, it seems to us that the fundamental task is to ascertain the intention of the legislature. Firstly by a consideration of the words themselves and only then if such words are ambiguous or uncertain should we have recourse to a construction by implication.

21. In our considered opinion and even on the basis that Section 3(4)(a) is devoid of any authority, the words "if known" as contained in this sub-section must have a capacity of bearing more than one meaning. It could not be said with conviction that the words could not reasonably be capable of more than one interpretation. They are we feel at best ambiguous, and uncertainty therefore exists. Accordingly it is open to us on the above principles to look at other factors in trying to ascertain or arrive at the correct interpretation of this sub-section.

22. The real question which remains is what was the intention of Parliament. More refined what would the legislature have said about the facts of this case, if at the time of the passing of this legislation these facts could possibly have been known or brought to their attention. Would it have been their view that a rate collector like Mr. Doyle could site inspect this office block on three occasions and on each, particularly on the last, as he was about to get information as to the identity of the would be occupier could he turn his back, look away or dim the lights? And then could he claim the lack of actual knowledge as a defence to an allegation of non-compliance with Section 3(4)(a). It is exceedingly difficult to believe that such was their intention.

23. Given the type of statute which it is, given the liability capable of being created thereby and given the undoubted ability of a rating authority, even one of the biggest in the country to readily comply with this sub-section, it is our view that such was not the intention of the legislature. Furthermore we are quite satisfied that the words in question are capable of being interpreted in the manner so determined by this Tribunal. Therefore looking at the matter afresh and purely on the basis of statutory interpretation, our belief is that this sub-section should be interpreted in such a manner that results, on the facts of this case, in the rating authority being in breach of Section 3(4)(a) of the 1988 Act. Accordingly the appeal fails.