

Appeal No. VA88/0/176 - 178

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

Anthony R Tarry

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Lot No on 16B.17, Townland of Tooreen, on 17 Croom and 2A Anhid West Co. Limerick

B E F O R E

Hugh J O'Flaherty

S.C. Chairman

Mary Devins

Solicitor

Brian O'Farrell

Valuer

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 28TH DAY OF OCTOBER, 1988

By notice of appeal dated the 25 August, 1988, the appellant appealed against the decision of the respondent fixing the rateable valuation of the above entitled hereditaments at £10.

By consent these three appeals were treated as one and heard together.

Messrs M.A. Power & Son, solicitors, Kilmallock, Co Limerick presented a written submission dated 18th October, 1988 and Mr Christopher Hicks, a valuer with 14 years experience in the Valuation Office, presented a written submission on the same date.

The oral hearing took place on 28th October, 1988 when Mr Paul Gallagher, Barrister (instructed by Maurice M.A. Power & Son) appeared for the appellant and Mr Hicks represented the respondent.

In his written submission, the appellant had stated that he was rated in respect of a salmon fishery and that, in fact, the fishery had been non productive over a number of years. He "would happily pay rates in respect of the fishery if and when it becomes productive again."

The valuation history of the property is as follows:-

Originally valued as three separate items in townlands of Arhid West, Croom and Tooreen with a total valuation of £50. This was reduced in 1967 to £36 because of an apparently localised fall off in catches.

As a result of the drainage scheme reduction was made in 1977 to £27 and the recent reduction to £18 was given to allow for disuse. All these reductions refer to this fishery in particular and no allowance has been made for the serious nationwide fall off in salmon catches since the late fifties as this affects all fisheries equally.

The fishery rate in £ at present is £10.85 compared to the county rate of £24.44 giving a total rates bill on the subject property of £195.30.

The rateable valuation devalues as follows:-

Estimated net annual value - £2,000

£2,000 @ 1% = £20.00

Valuation fixed at £18 (½ 1967 valuation).

In his evidence, Mr Tarry said that he had bought the relevant hereditament in 1963. Salmon fishing had been very good on his stretch of the River Maigue in the early years and, in particular, 1965-1966 were particularly good. In one of those years in excess of 200 salmon had been killed and in other years as many as 100. He himself had fished the river as well as his father and another very experienced fisherman.

In 1970 drainage works commenced and they went on for about 8 or 10 years. After that the river, it appears, had been badly polluted. Between the drainage works and what has happened

since, in effect, no salmon has been caught. (The evidence was that one salmon was caught in that whole period but the Tribunal takes the view that that does not count).

Mr Christopher Hicks, for his part, made the point that the Office of Public Works had done their best to reinstate the river, and, in particular had reinstated the weirs.

He made the point that salmon fishing throughout Limerick and north Kerry had decreased dramatically in the last 10 years or so and that this was reflected in the fact that the rateable valuation of these hereditaments had been reduced to take account of this.

However, he made the point that if the Tribunal were to hold that this stretch of the river had no rateable valuation it would affect the various comparisons that he had set forth in the course of his submission.

Mr Gallagher placed reliance on the decision of the High Court in Rosses Point Hotel Co Ltd v. Commissioner of Valuation (1987) ILRM 512; in the course of that case Mr Justice Barron said:-

"Profit earning ability is the basic element in determining the net annual value. It is based not on actual profits but on what the prospective tenant would anticipate would be his profits."

In this case had the river not delivered up any salmon for one or two years the Tribunal would be of the view that that would not affect the rateable valuation. However, there is a long history going back to 1970 whereby it is clear that no salmon has been killed on this river. Therefore can it be said that this is a "fishery" at all? The Tribunal thinks not.

It may be, hopefully, that the day will come when salmon once again spawn in this river but, until then, it appears to the Tribunal that this fishery has no rateable valuation at all.