

Appeal No. VA98/2/002 &
003

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

The University of Dublin - Trinity College

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: College (pt. of) at Map Reference 207/211, Ward: Mansion House A, Pearse Street, Dublin, 2. County Borough of Dublin and University (pt. of) at Map Reference 1.5F, James Street, Ward: Ushers F, County Borough of Dublin.

B E F O R E

Con Guiney - Barrister at Law

Deputy Chairman

Rita Tynan - Solicitor

Member

Anita Geraghty - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 18TH DAY OF NOVEMBER, 1999

By Notices of Appeal dated the 14th day of April 1998, the appellant appealed against the determination of the Commissioner of Valuation in fixing rateable valuations of £1,645 and £950 respectively on the above described hereditaments.

The Grounds of Appeal as set out in the said Notices of Appeal are that;

- "1. The valuation is excessive and inequitable.
2. The premises are occupied and used for public and/or charitable purposes and should be distinguished in the Valuation Lists as "exempt".

The relevant valuation history with respect to the premises at 207-211 Pearse Street is that Dublin Corporation requested a revision. In November 1996 a revised valuation of £1,645 (rateable) was issued. This valuation remained unchanged after the first appeal.

With regard to the premises at 1-5F James Street this new complex of buildings was listed for revision by Dublin Corporation in 1995. The property was valued at £1,100 (rateable). Arising from the first appeal the rateable valuation was agreed at £950 but the property remained rateable.

A written submission prepared by Mr. Desmond M. Killen FRICS, FSCS, IRRV of GVA Donal O' Buachalla on behalf of the appellant was received by the Tribunal on 23rd November 1998. This written submission was accompanied by a précis of the evidence to be given by Ms. Grace Dempsey, Treasurer of Trinity College, Dublin. The appellant also submitted a copy of the 1966 consolidated statutes of Trinity College, Dublin and of the University of Dublin to the Tribunal on 23rd November 1998.

The Tribunal received a booklet of copy documents on 15th March 1999 from the appellant. This booklet was a collection of documents obtained by way of voluntary discovery from the respondent by the appellant.

The Tribunal also received on 15th March 1999 a copy letter dated 24th February 1999 written by Ms. Dempsey together with two copy schedules. A further copy letter dated 7th April 1999 written by Ms. Dempsey was received by the Tribunal on 8th April 1999. The documents above referred to contained responses to the Tribunal's request for additional information on the current and capital funding of Trinity and any conditions or restrictions pertaining to funding.

The solicitor for the appellant also provided other material to the Tribunal, including copies of statutes and court decisions, which it is unnecessary to itemise.

Finally with respect to Mr. Killen's written submission, he stated that the essential issue in contention was exemption from payment of rates by the appellant.

A written submission prepared by Mr. Desmond Feehan B.Agr.Sc. on behalf of the respondent was received by the Tribunal on 19th November 1998. Mr. Feehan is a valuer in the Valuation Office for thirty-six years. Mr. Feehan's written submission stated that the quantum of valuation had been agreed for each hereditament. The only issue outstanding was exemption from the payment of rates.

The oral hearing took place on 14th December 1998 and resumed on 21st day of April 1999 at the Tribunal Offices in Dublin.

The appellant was represented by Mr. Aindrias O'Caomh S.C. instructed by Maxwell Weldon & Darley, Solicitors. The respondent was represented by Mr. Eamonn Marray B.L. instructed by the Chief State Solicitor.

Ms. Grace Dempsey, Treasurer of Trinity College, gave sworn testimony on behalf of the appellant. She said she was treasurer of Trinity College Dublin, which for all practical purposes was the same as Dublin University.

In preparing her testimony Ms. Dempsey said she had compared the factual situation of the operation of the University with the factual situation as it existed in 1919 when the Courts refused to grant exemption from rates to Trinity College Dublin. In particular Ms. Dempsey said she looked at the governance of the College, its funding, and the control of Trinity College Dublin by the state.

Ms. Dempsey said the University is governed by the Board of the College. The composition of the Board is set out in the statutes of Trinity College, Dublin and of the University of Dublin. These statutes are derived from the Charters and Letters Patent under which the University was established.

Ms. Dempsey said that all internal business of the University is controlled by the Board. In external matters the Board deals with the Higher Education Authority under the terms of the Higher Education Authority Act 1971. Again the University is governed by the Comptroller and Auditor General (Amendment) Act 1993 and is listed in schedule one to that Act.

Ms. Dempsey gave evidence as to the appointment of the Provost, who was head of the college. He was elected by the academic staff of the university and was then approved by the Government.

Ms. Dempsey then dealt with the admission of students to the University. All student applications to the University (except mature students) were processed and controlled through an independent body, the Central Applications Office (C.A.O.). The C.A.O. allocated places in the University on the basis of points achieved in the Leaving Certificate. In the case of mature students they can apply directly to the University. Ms. Dempsey said that the procedure for admission of mature students to Trinity College, Dublin was similar to the admission procedure for mature students at other Universities in the state.

Ms. Dempsey then dealt with the matter of fees charged by the University to students. Fees were structured after consultation with the Higher Education Authority (H.E.A.). Trinity's position as to fees was the same as the other Universities.

Fees are fixed after consultation by the group of chief financial officers from the universities with the H.E.A. This group of financial officers is composed of one representative from each of the universities. Ms. Dempsey said therefore, that all the universities were in the same position with respect to the fixing of fees. This procedure for fixing fees had been in place since the early 1970's. Additionally the procedure now had a statutory basis in the 1997 Universities Act.

Ms. Dempsey said that all fees received by Trinity go directly into the college's central fund. Also all subsidies received by the college from the government are paid into this fund. Subsequently all salaries to staff are paid out of this fund. The only payments to staff are salaries approved by the H.E.A.

Ms. Dempsey gave evidence as to the tuition charges payable by staff and their relations. Prior to 1992 permanent staff appointed before the 30th September 1992 could claim free tuition for themselves, their spouses and their children. This was the same position as that for other universities in the state. After 1992 this arrangement now only applies to staff members.

Ms. Dempsey then dealt with the statutory provisions, which govern the University with respect to financial reporting and auditing.

As far as the Higher Education Authority Act 1971 was concerned the following sections of the Act were relevant.

Section 3 sets out the general function of the H.E.A. and its rights with respect to the universities including Trinity College.

Section 7 sets out intervals for institutions to report on their finances.

Section 9 sets out an annual requirement as to financial planning over various periods.

Section 11 obliges institutions (including Trinity College) to supply information necessary for the H.E.A. to carry out its functions.

Section 12 provides that the H.E.A. is obliged to control payments of State funds made to universities.

Ms. Dempsey said these statutory controls by the H.E.A. had applied to Trinity since 1971.

Ms. Dempsey then dealt with the provisions of the Comptroller and Auditor General (Amendment) Act 1993. Schedule one of the Act brings Trinity under the remit of the Act. St. Patrick's College, Maynooth is also named in schedule one. Prior to this Act the other university colleges were subject to audit by the Auditor General.

Section 3 of the Act sets out the detailed provisions as to the application of the Act.

Ms. Dempsey gave evidence as to the annual auditing procedure used by the University. A professional firm of auditors prepared a financial report. This report went to the finance committee of the college. Subsequent to approval by the committee the financial report goes to the Board of the college, following approval by the Board the financial report goes to the Comptroller and Auditor General. Then the financial report goes to the H.E.A. with the report of the Auditor General. The financial report as before goes to the Minister for

Education who lays the financial report before the houses of the Oireachtas. The significance of laying the financial report before the houses of the Oireachtas is that it can then be subject to the scrutiny of the Committee of Public Accounts.

Ms. Dempsey said that in 1994/1995 the University had been audited by the Comptroller and Auditor General like all the other universities.

Ms. Dempsey gave evidence about the Divinity School at the University. It was now called the department of Hebrew, Biblical, and Theology Studies. Students seeking admission to this department had to go through the C.A.O. procedure. This section of the University was no longer distinguished as it had been in the past. The students here were subject to the same examination requirements and procedures as the other students in the rest of the college. Again the teaching provision in the department is not confined to any one religion.

Ms. Dempsey said the college chapel was non-denominational. It was used by members of various Christian denominations. Ecumenical services take place in the chapel. The activities in the chapel are similar to the activities carried on in the churches of the other universities.

Ms. Dempsey then adverted to what the 1919 Court case, 2.I.R. (1919) 493, called "free endowments". The College does not now have this type of funds. All trust funds of the college are individually defined for specific and pre-determined purposes. The Board or members of the college do not have particular control of these funds.

Ms. Dempsey referred to funding of the University by the state. There had been a significant change here from 1919. Trinity now received in excess of 50% of its income, by way of direct subvention from the State. The range of State subvention to the other universities was 52%-60%. The balance of Trinity's income came by way of fees and small amounts of miscellaneous income. Ms. Dempsey said the other universities received private bequests as well.

Ms. Dempsey said that what was known, as the junior bursar's poundage at Trinity no longer existed.

Ms. Dempsey said the objects of the University were in common with that of the other universities, as set out in Section 12 of the Universities Act 1997. The objects of Trinity were to advance knowledge through teaching, scholarly research, and scientific investigation. Ms. Dempsey said the objects of Trinity were the same prior to the 1997 Act.

Ms. Dempsey said that Students obtained scholarships at Trinity by their success at academic examinations, which they sat early in their years at the college. This process at Trinity was the same as that at other universities in as much as in all cases rewards are made on the basis of academic merit.

Ms. Dempsey then referred to the capital funding of Trinity. From 1971 onwards the capital funding of the University was 100% financed by the state. This was the situation in the other universities as well. In the 1990's the concept of public/private partnerships emerged with respect to the capital funding of the universities. This meant that the state provided 50% of the funds and the private donors the other 50%. Again the public/private partnership approach applied to all the universities including Trinity.

Ms Dempsey gave evidence as to the provision of student accommodation by Trinity. This was not the main activity of the University. Facilities for accommodation were provided on a self-financing basis. Students pay rent and the accommodation is also rented out during the summer vacation. A similar situation prevailed at all the other universities.

Ms Dempsey then described the use of each of the hereditaments the subject of this appeal. The Pearse Street property had the following academic departments located there, business studies, psychology, microelectronics and electrical engineering. Also located there was part of the university's information system service, which provides information technology for various aspects of the college's activities. The Pearse Street property was purchased in the early 1990's under the public/private partnership scheme.

The property at St James hospital was home to departments of Trinity's faculty of health sciences. The departments there were obstetrics and gynaecology, psychiatry, clinical medicine and surgery.

Under cross-examination by Mr. Marray, Ms. Dempsey said its Charters, Letters Patent and the College statutes together with the relevant legislation of the Oireachtas governed Trinity. In connection with the Higher Education Authority Act 1971 Ms Dempsey said it did not change the internal management structure of the University but the Act did change the way that management structure responded. Trinity had to live within the guidelines set by the H.E.A.

Ms. Dempsey agreed with Mr. Marray that if Trinity did not request funds from the H.E.A. then it would not be subject to control by the Authority.

Under cross-examination by Mr. Marray as to what were the differences between Trinity and the colleges of the National University of Ireland, Ms. Dempsey said that she was not aware of any substantial difference on a day-to-day basis. She said that differences related to the foundation of Trinity.

In further replies Ms. Dempsey said the Universities Act 1997 and the Comptroller and Auditor General (Amendment) Act 1993 put Trinity on the same footing as the N.U.I. colleges. When Mr. Marray reminded Ms. Dempsey that the revision of the hereditaments, the subject of this appeal, predated the Universities Act 1997 Ms. Dempsey said that Act put in statutory form the existing practice at Trinity.

Mr. Marray asked Ms. Dempsey why had the 1997 Universities Act given different treatment to Trinity. In reply Ms. Dempsey said the foundation of the college by charter required that the charter be amended by private bill. There were legal precedents for this, such as the Royal College of Surgeons.

In the case of Trinity Ms. Dempsey said that matters relating to the election of the Provost and the composition of the Board of the College contained in its Charters and Letters Patent were being amended by a private bill which was now at committee stage in the Oireachtas. The amendments were designed to bring Trinity governance in line with the substance and purpose of the 1997 Universities Act. Furthermore Ms. Dempsey said that the exemptions granted by the Universities Act 1997 to Trinity would be inoperative if the private members bill was not enacted within the time frame specified by the Act.

Mr. Marray questioned Ms. Dempsey about the power of the College Board, which is referred to at page 34 of the consolidated statute at number 4. This is a power to invest property and funds of the College. Ms. Dempsey replied this is a standard provision for an institution to invest funds. She said this power was used in connection with the management of Trinity pension funds and the college trust funds.

In a further reply Ms. Dempsey said that the enactment of the private bill would bring Trinity into complete conformity with the Universities Act 1997.

Under cross examination by Mr. Marray about professors of C class in the Divinity School, as mentioned in page 23 of the consolidated statutes at number 8, Ms. Dempsey said that the college had no C class professors. She went on to say that the 1966 consolidated statutes needed amendment. The revision of the statutes had been put in abeyance pending the enactment of the private act by the Oireachtas.

In reply to Mr. Marray's question about the payment of teaching staff, Ms. Dempsey said there was no guaranteed payment of a professorship in any area out of the proceeds of student fees.

On re-examination Mr. O'Caomh asked Ms. Dempsey how long Trinity had been receiving funding from the State. She replied that this source of funding had existed since 1946.

Mr. Killen gave sworn testimony to the Tribunal. He said the dispute in this case was a legal issue. Mr. Killen then referred to the valuation history of St. Patrick's College, Maynooth. In 1956 the High Court had held that Maynooth was not entitled to exemption. In 1979 following a Circuit Court Appeal, Maynooth was distinguished as exempt. Mr. Killen said that he could not ascertain the difference in circumstances, which gave rise to the exemption in 1979. There was no decision of the Circuit Court and Mr. Killen thought there may have been an agreement between the parties immediately prior to the Court hearing.

Mr. Killen said he had written to the respondent about the reasons for non-exemption in the present case and it was in that context that the respondent stated that Maynooth had been granted exemption because it satisfied the public purpose requirements of section 63 of the

Poor Relief (Ireland) Act 1838. Mr. Killen said this letter from the respondent did not refer to the new library at Maynooth, which had also been granted exemption in 1985.

Under cross-examination by Mr. Marray, Mr. Killen agreed that exemption from rates for the subject hereditaments could co-exist with rateability of the college properties encompassed by the Local Government (Dublin) Act 1930. Mr. Killen said this would not be unusual as the Dublin Port and Docks Board (mentioned in the 1930 Act) enjoyed relief under that Act and also had been exempted from rates with respect to other properties owned by the Board.

Mr. Desmond Feehan gave sworn testimony on behalf of the respondent. He adopted his written submission as his evidence to the Tribunal. He said the properties owned by the appellant within its boundaries in 1930 paid a reduced rate and its buildings outside that boundary paid full rates.

Under cross-examination by Mr. O’Caoimh as to why Trinity was refused exemption, Mr. Feehan said that as an appeal valuer he had made a recommendation on quantum and the legal position, as he understood it. His understanding of the legal position was that Trinity College Dublin was different from the other universities in that it did not comply with the sections of the 1997 Universities Act as specified in Section 4(2) of that Act. Furthermore in his understanding of the legal position, Trinity in terms of its Charters, Statutes and governance was different from the other universities.

In further replies Mr. Feehan said that the appellants submission to him at appeal stage had not overcome his reservations about the legal status of Trinity with respect to exemption from payment of rates.

Mr. Feehan said he thought the Commissioner’s decision on the appeal was based on the witnesses reservations as contained in his report and the opinion of counsel.

In reply to questions by Mr. O’Caoimh about the rateability of Maynooth College, Mr. Feehan gave a history of recent developments there.

In 1979 two thirds of the buildings there had been given domestic relief on foot of the legislation enacted in 1978. In 1980/1981 part of the Maynooth property was exempted from

rates and part of the property was not exempted. The exempt portion was the university attended by lay people. The Catholic seminary portion was not exempted. Mr. Feehan said the exemption granted in 1980/1981 was on foot of the public purposes criterion.

Mr. Feehan said he dealt with the new Library in 1985. He recommended that the old library not be exempted as it was not accessible to lay students. He had recommended that the new Library be exempted as it was used predominantly by students admitted under the C.A.O. system. He had based his recommendation about the new library on its usage. The Commissioner had endorsed his recommendation.

Mr. O’Caoimh at this stage made a submission to the Tribunal in as much that he would be seeking discovery from the respondent. Mr. O’Caoimh said that Mr. Feehan’s evidence had disclosed that Trinity was refused exemption because of its differences to other Universities in Ireland. He said that if the Valuation Office’s file on Maynooth (which college was different to the other Universities) showed that Maynooth had been granted exemption in circumstances similar to that of Trinity, then the Valuation Office’s argument in the instant case fails.

The hearing before the Tribunal was then adjourned to allow the appellant to seek voluntary discovery or in default to bring a motion for discovery.

The oral hearing resumed on 21st April 1999 at the Tribunal’s Office in Dublin.

Mr. O’Caoimh then resumed his cross-examination of Mr. Feehan. In the course of this cross-examination, Mr. O’Caoimh put in evidence the documents furnished by the Valuation Office by way of voluntary discovery. These documents were contained in the booklet received by the Tribunal on 15th day of March 1999 and related to the appellant’s instant appeal.

Two documents put in evidence by Mr. O’Caoimh are annexed to this judgment **at Appendix One.**

The first document was called during the hearing the “fifty five points”. This document had been prepared by Ms. Dempsey. It was a schedule setting out:

- (1) the issues of the case as identified in the 1919 judgment
- (2) the July 1997 or current position in relation to each of the issues raised
- (3) the relevant comparable position in other colleges in relation to each of the issues raised.

The second document was a report consisting of three pages prepared by the Managing Valuer, Mr. Walsh and dated 28th October 1997.

Mr. O’Caoimh drew the attention of the Tribunal to the second last paragraph on the first page of the document. This paragraph referred to the advice given by Richard Cooke S.C. in 1984 in respect of Maynooth College. The advice was quoted to the effect that current user be the proper test. The advice was also stated to have said that the provision of University education was a use for public purposes.

Finally in connection with this document Mr. Feehan confirmed that the hand-written note on the third page of the document referring to SR was a reference to Mr. Seamus Rogers, Commissioner of Valuation.

Mr. O’Caoimh then put in evidence a copy letter from Mr. Killen to Mr. Paul D. Guinness of Maxwell Weldon & Darley, Solicitors for the appellant dated 28th January 1999. Mr. O’Caoimh explained the background to this letter, which related to the discovery allowed to the appellant by the respondent in connection with the Maynooth file. Here Mr. Killen had been allowed to inspect certain parts of the file and make notes thereon. The copy letter contained a summary of Mr. Killen’s notes on the file. This document is annexed to this judgment by way of **Appendix Two**.

Ms. Dempsey returned to give evidence about her letter dated 24th February 1999 and the accompanying documents.

She said that recurrent expenditure in the period 1992 to 1997 amounted to £264 million. Alongside this she had listed the funding of professorships and lectureships which had come from sources other than the state for the period 1992 to 1997. This expenditure amounted in total to a sum in the region of £1,000,000 or less than 0.5% of recurrent expenditure.

Ms. Dempsey said there were no restrictions on the admission of students imposed by the private benefactors of these professorships and lectureships.

Ms. Dempsey said capital funding over the period 1990-1997 was in the region of £45,000,000. The State provided 59% of this funding and the private sector the balance. She said that the donors of private capital were not allowed to impose any restrictions or conditions as to the admission of students to the facilities provided by these donors.

In his legal submission, Mr. Marray stated that Section 69 (1) and (2) of the Local Government (Dublin) Act 1930 provided a full answer to the appellant's case. Subsection 1 & 2 of Section 69 stated:

- “(1) *For the purpose of the assessment and levying of the municipal rate on any hereditament or tenement mentioned or included in a class mentioned in the second column of the Second Schedule to this Act, the valuation of such tenement or hereditament shall be deemed to be reduced to the proportion, specified in the first column of the said Second Schedule in respect of such hereditament or tenement or such class (as the case may be) of the actual valuation under the Valuation Acts of such hereditament or tenement.* *Rating of certain classes of property*
- (2) *Every hereditament or tenement mentioned or included in a class mentioned in the second column of the Second Schedule to this Act shall, for the purpose of assessment to and liability for the municipal rate, be deemed to be excluded from and dis-entitled to every and any exemption or relief from poor rate which is given by law otherwise than by reduction or control of the valuation on which poor rate is assessed, but such exclusion shall not operate to exempt from rateability to the municipal rate any half-rent which would be rateable to the poor rate if this Act had not been passed.”*

Mr. Marray stated that because the subject hereditaments were located within the municipal area the only relief available to Trinity was that contained in the second schedule to the 1930 Act. Furthermore Section 69(2) excluded and dis-entitled to every and any exemption or relief from poor rate hereditaments in the aforesaid second schedule otherwise than by reduction or control of the valuation on which poor rate is assessed.

Mr. Marray said the import of *Trinity College Dublin –v- Commissioner of Valuation* (1919) 2 I.R. 493 was that the Tribunal had to look at the Charters and Statutes of the appellant to determine whether it was entitled to exemption. Additionally the Tribunal should advert to the extent that the Charters and Statutes of Trinity remain unrepealed.

Mr. Marray submitted that the test for public purposes exemption was a composite one. A number of factors needed to be taken into account. He cited the dictum of Davitt.P in *Maynooth College –v- Commissioner of Valuation* 1958 I.R. 189. This dictum was paraphrasing Madden J. in *Pembroke Urban District –v- Commissioner of Valuation* (1904) 2 I.R. 429. The dictum of Davitt P. was to the effect that it was impossible to lay down any general rule applicable to educational institutions with regard to exemption from rateability.

Mr. Marray referred to *University of Limerick –v- Commissioner of Valuation VA95/5/010 – VA95/5/014* and the list of authorities referred to on page eight of the judgment, which dealt with the issue of “dedicated to or used for public purposes”.

Mr. Marray addressed the issue of current user in his submissions. In the case of the appellant the Tribunal should look at the Charters and Statutes of the appellant. Governance of Trinity was derived from its Charter and Statutes and governance was determinative of current user.

In the context of governance it was material that Trinity had sought dispensation from the Universities Act 1997. The long title of this Act shows that the legislation was designed as a comprehensive response to the regulation of all universities. Mr. Marray suggested that the reason Trinity sought a dispensation was that its Charters and Statutes prevented its assimilation and identification with the other universities in the State. Mr. Marray added that the dispensation sought by Trinity extended until 2001 and therefore the appeal was premature.

Mr. Marray referred to the significance of public audit in the determination of exemption for public purposes. He said that state audit was no more important than state subvention. State audit was not a conclusive factor on its own for exemption purposes. He cited the case of *St. Macarten’s Diocesan Trust –v- Commissioner of Valuation* 1990 2 I.R. 508. In that case

subvention by the State was not sufficient to enable the appellant to secure exemption from rates on the basis of dedication or user for public purposes.

Mr. Marray submitted that the appellant cannot rely on the fact that another third level institution (Maynooth College) had gained exemption. The appellant could not rely on estoppel or the doctrine of legitimate expectation. The latter doctrine can not be relied on if it prevents the operation and enforcement of legislation.

Mr. Marray cited the following cases in support of this point, Nova Media Services Limited – v- Minister For Post and Telegraphs (1984) ILRM 161, Nolan –v- Minister for Environment (1989) IR357, Devit –v- Minister for Education (1989) ILRM 639, Pesca Valencia Limited – v- Minister for Fisheries (June 6, High Court, 1989).

In his legal submissions Mr. O’Caoimh said there had been a significant change in the operation of Trinity since 1919. He said that the Court in 1919 reached its decision based on facts disclosed in the case.

In response to Mr. Marray’s argument about estoppel and legitimate expectation, Mr. O’Caoimh said he was not making any case on the basis of estoppel.

Mr. O’Caoimh said the significance of the Maynooth exemption was disclosed by the Commissioner of Valuation’s observation in 1979 that Maynooth was controlled by the Catholic Hierarchy. This observation had been ascertained by Mr. Killen’s inspection of the Maynooth file at the Valuation Office. Maynooth had a different type of governance to the universities exempt from the payment of rates. Consequently when Maynooth obtained exemption it demonstrated that governance is not determinative of the exemption issue. Again Mr. O’Caoimh submitted that the 1919 Trinity exemption case stated that governance is an issue but again not determinative.

Mr. O’Caoimh said that the central criterion is current user. He said this submission was supported by the opinion of Richard Cooke S.C. in 1984. The consequence of Mr. Cooke’s advice was that the Commissioner of Valuation granted exemption to Maynooth.

Mr. O’Caoimh said that the evidence offered by the appellant showed that the user of Trinity and the way it operated was in no way different to the other universities, which had obtained exemption.

Mr. O’Caoimh referred to Mr. Marray’s arguments about the application of the Local Government (Dublin) Act 1930. The decision of the Supreme Court in the case of Dublin Corporation –v- Trinity College Dublin delivered on 10th December 1984 dealt with the issue as to what properties of Trinity were subject to the 1930 Act. The Court decided that the Act applied to the premises occupied by Trinity in 1930. Mr. O’Caoimh said the subject hereditaments were outside the scope of the 1930 Act. He said the Act of 1930 cannot be construed as barring the appellant from seeking exemption from the payment of rates.

As to the reference to exemption from poor rate contained in Section 69 (2) of the 1930 Act Mr. O’Caoimh said that Section 69 dealt with the purposes of assessing and levying of the municipal rate. In 1930 there were different categories of rates. The effect of Section 69 (2) was that if there was an exemption from poor rate it was ignored for the purposes of municipal rates.

Mr. O’Caoimh said that the St. McCartens Diocesan Trust case had no bearing on the exemption issue. There had been no public audit of the hereditament in that case. A more appropriate analogy was the Tribunal decision in Eastern Health Board –v- Commissioner of Valuation, VA88/0/381. Exemption was granted because the Health Boards now derive their funds largely from central government.

Mr. O’Caoimh again referred to the governing statutes of Trinity. These statutes cannot be taken in isolation. The intervening legislation enacted by the Oireachtas must be taken into account. In this respect Mr. O’Caoimh cited the Higher Education Authority Act 1971 and the Comptroller and Auditor General (Amendment) Act 1993. Again the Universities Act 1997 confirms in large measure the existing situation at Trinity prior to 1997. The 1997 Act means that the State has recognised the Board of Trinity and has given it an opportunity to make changes to meet the approval of the Minister for Education.

In conclusion Mr. O’Caoimh submitted that the flaw in Mr. Marray’s submissions was his focus on Trinity’s Charter as being crucial to the determination of public purposes exemption.

Mr. O’Caoimh said a reference to historic charters as being solely determinative is not consonant with the exemption granted to Maynooth in 1984 and the opinion of Richard Cooke S.C. who advised the Commissioner of Valuation on the issue.

Mr. O’Caoimh cited the following case as authority for the current user test for exemption, *Governing Body of University College Cork –v- Commissioner of Valuation 2 I.R. (1911) 593.*

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

The Tribunal finds that;

- (a) the factual situation as to the operation of Trinity at the time of revision of the subject hereditaments has radically changed from the factual situation pertaining at Trinity in 1919.
- (b) the factual situation as to the operation of Trinity at the time of revision of the subject hereditaments was for all practical purposes similar to the universities in the state that have been granted exemption from payment of rates.

These findings are largely based on the evidence given by Ms. Dempsey, which was not in any significant degree rebutted by the respondent.

As to the legal submissions the Tribunal considers that Mr. O’Caoimh’s submission as to the non-applicability to the exemption issue of the Local Government (Dublin) Act 1930 based on the decision of the Supreme Court in *Dublin Corporation –v-Trinity College Dublin* delivered on 10th December 1984 is correct.

As to the test for exemption for public purposes the Tribunal considers that Mr. O’Caoimh’s submission that current user is the proper test is correct.

The Tribunal bases this consideration on the dictum of Kenny J. in the *Trinity College Dublin –v- Commissioner of Valuation 2 I.R. 1919, 519.*

“in all the Irish authorities where the question of the meaning and application of the words “used for public purposes”, or “altogether of a public nature”, or “used exclusively for public purposes”, has arisen, it has been uniformly determined that the “user”, essential in order to establish exemption, must be available for all the subjects of the realm; the “purposes” must be purposes in which every member of the community has an interest; and the premises must be used for the public benefit of the whole community, and not for the private or exclusive use of any members, or any particular class or section”.

Accordingly the Tribunal determines that the hereditaments the subject of this appeal should be distinguished as exempt in the Valuation Lists, being used for public purposes within the meaning of Section 63 of The Poor Relief (Ireland) Act 1838.