THE HIGH COURT

2007 62 IA

IN THE MATTER OF AN INTENDED ACTION

BETWEEN

B. DOE AND R. DOE

PLAINTIFFS

AND
THE REVENUE COMMISSIONERS

DEFENDANTS

Judgment of Mr. Justice Clarke delivered on the 18th day of January, 2008.

1. Introduction

1.1 Many parties would prefer that their involvement in legal proceedings might be kept confidential or, at a minimum, that confidence might attach to at least certain aspects of the evidence which the court might have to hear in order to properly determine the litigation in question. However, the Constitution, and in particular Article 34.1, places a high value on the administration of justice in public. The circumstances in which a court is, therefore, entitled to conduct legal proceedings in private, or to direct that information which formed part of the court's consideration should not be made public, are significantly limited.

1.2 This judgment is concerned with those limitations. The intending plaintiffs ("the plaintiffs") brought a preliminary application in advance of issuing proceedings, designed to obtain the court's approval for the issuing of such proceedings under the assumed name referred to in the title above, together with directions designed to allow for the conduct of the intended proceedings at least partially in camera. While that preliminary application was heard, in theory, on an ex parte basis, the Revenue Commissioners ("the Revenue"), as the proposed defendants, had been informed of the plaintiffs' intention to bring the application, requested that they be heard, and were, without objection, heard on the issue. The hearing occurred on the 11th December, 2007.

1.3 For reasons which will become clear in the course of this judgment, the application was one of some considerable urgency in that the proceedings, if they were to go ahead, required, if they were to be of any affect, a final decision of the court not later than 31st December, 2007. It was also by no means clear as to whether the plaintiffs would wish to go ahead with the substantive proceedings unless they were given permission to conduct same under an assumed name. In those circumstances it was important that a decision in principle, on the entitlement or otherwise of the plaintiffs to maintain the proceedings under an assumed name, was made as soon as practicable and in sufficient time to allow the substantive proceedings to be heard (if necessary) in time that a judgment be delivered prior to the Christmas vacation. For those reasons I indicated to the parties that I would rule on the matter (without giving reasons) on the day following the hearing and reserve until a future occasion a detailed judgment outlining my reasons for that ruling.

1.4 On the 12th of December, 2007 I ruled to the effect that I was not persuaded that it was appropriate to permit the plaintiffs to maintain these proceedings under an assumed name. Counsel for the plaintiffs sought an opportunity to take instructions from her clients in the light of the ruling which I had delivered. When those instructions were forthcoming, counsel indicated that it was not her clients' intention to maintain the substantive proceedings and, in that sense, the proceedings never, in reality, were commenced.

1.5 This judgment is directed towards setting out the reasons why I ruled as I did. It is appropriate to look first at the background to the intended proceedings.

2. Factual background

2.1 I should emphasise that the court was not told the names of the actual plaintiffs. Evidence was placed before the court on behalf of the plaintiffs by their solicitor. I should also emphasise that, in taking that course of action, I was following the practice adopted by McCracken J. in *Re Ansbacher (Cayman) Limited* [2002] 2 I.R. 517. In that case a preliminary issue as to whether, on the facts of the relevant case, the court had any power to order a hearing in camera or in some other way limit the publication of the applicants' names, was determined by McCracken J. in circumstances where the relevant preliminary application was maintained in the name of the applicants' solicitors. As McCracken J. pointed out, at p. 520 of the judgment, there is something of the chicken and the egg about such matters.

2.2 I agree with McCracken J. that the appropriate solution to any such difficulties is that a party is entitled, without revealing its identity, to apply to court for permission to maintain proceedings anonymously or in some other manner which would have the effect of maintaining confidentiality in respect of the identity of the party concerned. However, I also agree with McCracken J. that the court should not go on to consider the merits of any substantive application without first determining whether it is appropriate for that substantive application to be brought in confidence. I use the term "in confidence" to encompass any circumstances where the court is invited to make an order which would limit public access to the identity of a party or parties to litigation. The nature of the substantive application which the party concerned might wish to bring should only be considered to the extent that it may be necessary to enable the court to rule on the entitlement to bring the proceedings in confidence.

2.3 To that extent only it was necessary to address the issues which the plaintiffs wished to raise in the substantive proceedings. As appears from the affidavit of their solicitor, the plaintiffs, on 24th October, 2007, entered into a settlement agreement with the Revenue whereby a specified sum was accepted by the Revenue as settling all of the liabilities of the plaintiffs to the Revenue for years up to and including 2001.

2.4 Previously, on the 25th September, 2007, the Revenue had written to the plaintiffs' taxation advisers to acknowledge receipt of a cheque for €1,136,685 in settlement of liabilities under a scheme called "Disclosure of Undeclared Liabilities by Holders of Off-Shore Assets". That letter also confirmed acceptance of the relevant sum in settlement of additional liabilities for the tax years specified and further stated that details of the settlement "will be published in due course in Iris Oifigiúil". It is clear that both before, and after, that letter, the plaintiffs' taxation advisers and officials of the Revenue had been in debate as to the question of whether publication of the relevant details of the settlement which had, in principle, been reached, was legally mandated. The plaintiffs' taxation advisers put forward an argument to the effect that it was not. The Revenue disagreed.

2.5 On the basis of their interpretation of the relevant provision of the Taxes Acts, the Revenue maintained that there was a legal obligation to publish the settlement terms not later than 31st December, 2007 and indicated an intention so to publish. It was with a view to preventing such publication that the plaintiffs wished to initiate these proceedings. Had the plaintiffs proceeded with the substantive proceedings (whether anonymously or otherwise) it was their stated intention either to seek an interlocutory injunction restraining the relevant publication or, alternatively, and, in practice, more likely, to have sought to arrange for a full hearing of the

case in very early course so as to have the substantive issue decided in time, so that the legal position in relation to publication was clear prior to 31st December, 2007.

2.6 It is not necessary, for the reasons which I have set out, to go into the merits of the case which the plaintiffs wished to bring. However, in brief terms, the issues between the plaintiffs and the Revenue centred on the proper interpretation of certain provisions of the Taxes Consolidation Act, 1997, ("the 1997 Act") (as amended). Section. 1086 of the 1997 Act (as amended) provides for the publication of the names of certain tax defaulters. Sub-section (2) of that section obliges the Revenue, in respect of each quarterly period, to compile a list of names, addresses and occupations of persons on whom fines or penalties were imposed by a court under the Taxes Acts or in relation to a tax or in respect of whom the Revenue Commissioners refrained from initiating or settled proceedings for the recovery of any such fine or penalty because of an agreement entered into whereby the Revenue accepted a sum of money in settlement of a claim for a tax which included interest, fines or penalties in respect of that tax.

2.7 Sub-section (3) (which is, in terms, stated to be "notwithstanding any obligation as to secrecy imposed on them by the Taxes Acts or the Official Secrets Act, 1963") requires the Revenue to publish the list concerned before the expiration of three months from the end of the quarter in which the event giving rise to the inclusion in the list occurred. Sub-section (4) as amended by, in particular, s. 126(1)(d)(iv) of the Finance Act, 2002, provides an exclusion from publication in a number of cases including what is, for the purposes of this case, the relevant category, being a situation where the relevant fine or penalty does not exceed 15% of the amount of tax included in the settlement concerned.

2.8 The penalties relevant to this case are dealt with by s. 1053 of the 1997 Act (as amended) which *prima facie* exposes a person who has made a fraudulent or negligent return or who fails to deliver a return by reason of fraud or neglect, to a fine of €125 together with what is described in the case of a return as "the amount of the difference specified in subs. (5)" or in the case of a failure to deliver a return as specified in subs. (5A). See Finance Act, 2002 s. 130(1)(a)(i). Ss.(5) and (5A) are in the following terms.

> "(5) The difference referred to in subsection (1)(ii) shall be the difference between –
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> (a) the amount of income tax payable for the relevant years of assessment by the persons concerned (including any amount deducted at source and not repayable), and
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> (b) the amount which would have been the amount so payable if the return, statement, declaration or accounts as made or submitted by that person had been correct.
>
> (5A) The difference referred to in subsection (1A)(b) is the difference between-
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> (a) the amount of income tax paid by that person for the relevant years of assessment, and
>
> (b) the amount of income tax which would have been payable for the relevant years of assessment if the return or statement had been delivered by that person and the return or statement had been correct."

2.9 In essence, the dispute between the plaintiffs' tax advisers and the Revenue concerns the proper interpretation of the above provisions relating to an imposition of penalties on all defaulting taxpayers and in particular the interpretation of s. 1053(5) of the 1997 Act. The Revenue argue that the proper interpretation of the relevant provision is to the effect that a penalty, equivalent to the amount of tax underpaid, is to be imposed in addition to the basic sum of €125. The plaintiffs' tax advisers argue that the relevant section is badly worded, ought properly be construed against the Revenue as a taxation statute, and that, on that basis, the maximum penalty which could properly be imposed was the standard penalty of €125. As that sum was less (by a very significant margin) than 15% of the total amount of the tax included in the settlement, then it followed, it was argued, that the publication of the plaintiffs' names in the relevant list of tax defaulters was not permitted. It will be seen, therefore, that the dispute comes down to a proper interpretation of the relevant provisions of s. 1053 concerning the calculation of penalties.

2.10 For the reasons which I have already set out, it is not appropriate for me to express any view as to the merits or otherwise of the issue raised. I have conducted an analysis of the basis of the plaintiffs' claim, solely for the purposes of identifying the type of proceedings which the plaintiffs wished to pursue in anonymity.

2.11 However, before passing on to the legal principles applicable to the question of whether a party may be entitled to such anonymity, it is important to note that the settlement reached between the plaintiffs' taxation advisers and the Revenue did, in fact, include within it a significant sum in respect of a penalty. The particulars of the manner in which the settlement of €1,136,685 was calculated are not in dispute. The settlement was, as I have noted, under a scheme adopted by the Revenue which enabled persons to make a qualifying disclosure of under-declared liabilities in the case of holders of offshore assets. Involvement in that scheme involved the making of a disclosure in a form provided by the Revenue. The plaintiffs, through their tax advisers, made such a disclosure and set out a calculation which noted that there had been €820,782.92 of undisclosed income over a number of tax years which would have generated a primary tax liability in the sum of €355,658.32. The plaintiffs' own tax advisers calculated the interest on that sum at €425,368.51 and penalties at an identical sum to the primary tax liability of €355,658.32.

2.12 The calculation carried out by the taxpayers' own tax advisers was, clearly, accepted by the Revenue and payment in the total sum as so calculated was, in fact, made. In those circumstances it is clear that the settlement did, in fact, include a sum for penalties which was equal to, and therefore well in excess of 15% of, the tax included in the settlement. It is clear, therefore, that, whether or not the plaintiffs' tax advisers were correct in their interpretation of the provisions of s. 1053 concerning penalties, the plaintiffs, through those advisors, did, in fact, make a payment in respect of penalties which was based on the Revenue interpretation of those sections and which, in substance, required the penalty to be the "same again" as the original amount of tax which should have been paid on the relevant undisclosed income. Against that background it is necessary to turn to the jurisprudence concerning the maintenance of proceedings with anonymity.

3. Proceedings Otherwise Than in Public

3.1 The purpose behind the requirement in Article 34 that justice be administered in public, was noted by Walsh J. in In *Re R. Limited* [1989] I.R. 126 in the following terms:

> "The issue before this Court touches a fundamental principle of the administration of justice in a democratic state, namely the administration of justice in public … the actual presence of the public is never necessary, but the administration of justice in public does require that the doors of the courts must be open so that members of the general public may come and see for themselves that justice is done. It is in no way necessary that the members of the public to whom the courts

are open should themselves have any particular interest in the cases or that they should have business in the courts, justice is administered in public on behalf of all of the inhabitants of the State."

3.2 It is also worth noting that the European Court of Human Rights has expressed similar views in, for example, *Futter v. Switzerland* [1984] 6 EHRR 272, in which the Court said the following:

> "The public character of proceedings before the judicial bodies referred to in article 6(1) (of the Convention) protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts … can be maintained. By rendering the administration of justice visible, publicity contributes to the achievement of aim of article 6(1), namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society."

3.3 Prior to the decision of the Supreme Court in *The Irish Times and Others v. Ireland and Others* [1998] 1 I.R. 359, it had been suggested that there might be no circumstances, other than those prescribed by statute, in which justice might be administered otherwise than in public. Irish Times was a case concerned a reporting restriction imposed in respect of a then pending Circuit Court criminal trial. As pointed out by Hamilton C.J., at p. 383 of the judgment:-

> "The effect of such an order in this case would deprive the wider public, who did not have access to the court in which the proceedings are being conducted, of knowledge of the proceedings. Knowledge of the proceedings was limited to those inhabitants of the State who were able to be present in the court room in which the trial was being conducted.
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> As justice is required to be administrative in public on behalf of all of the inhabitants of the State, such inhabitants are entitled to be informed of the proceedings in the court and to be given a fair and accurate account of such proceedings and the media are entitled to give such an account to the wider public.
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> The public nature of the administration of justice and the right of the wider public to be informed by the media of what is taking place are matters of the greatest importance".

3.4 However Hamilton C.J. went on to note, at p. 385, that:-

> "While the public nature of the administration of justice and the constitutional right of the wider public to be informed of what is taking place in courts established by the Constitution are matters of public importance these rights must in certain circumstances be subordinated to the interests of justice and the rights of an accused person which are guaranteed by the Constitution".

3.5 Furthermore, at p. 386 Hamilton C.J. noted that a trial judge is:-

> "…Under an obligation to hold the trial in public and not to interfere or in any way restrict the right of the media to publish a fair and accurate report of the proceedings publicly heard before the court unless such publication is prohibited by law or would interfere with or prejudice an accused person's right to a fair trial.
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> An accused person's right to a fair trial includes the right to have the jury reach its verdict by reference only to evidence lawfully admitted at the trial.
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> It is hard to envisage any circumstances (other than where a 'trial within a trial' is held for the purposes of determining whether particular evidence is admissible or where persons are jointly indicted but tried separately) in which fair and accurate reporting in or by the media of such evidence could in any way interfere with, or in any way prejudice this right or compromise the proper administration of justice. Neither of the said exceptional circumstances arise on the facts of this case."

3.6 While delivering separate judgments, the other members of the court expressed similar views.

3.7 It is clear, therefore, that the harmonious interpretation of the Constitution may require, in certain limited circumstances, that a restriction on the entitlement to report, or report contemporaneously, certain matters which occurred during a court hearing may, even in the absence of a statutory provision to that effect, be necessary to protect the right of an accused to a fair trial.

3.8 In considering the effect of Irish Times *in Independent Newspapers (Ireland) Ltd v. Anderson* [2006] 3 I.R. 341, I said, at p. 347, the following:-

> "Therefore it would appear that orders restricting the reporting of proceedings in court can only be made where:-
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> 1. There is an express legislative provision to that effect; and
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> 2. in the event that the relevant legislative provision contains a discretion, the court is satisfied that to have the case heard in public would fall short of doing justice; or
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> 3. in the event that there is no express legislative provision the court is satisfied that
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> (a) there is a real risk of an unfair trial if the order is not made; and
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> (b) the damage which would result from not making an order would not be capable of being remedied by the trial judge either by appropriate directions to the jury or otherwise."

3.9 Applying those principals to the case then under consideration, I found it appropriate to quash an order made by the learned District Justice in the relevant case, which order would have precluded publication of the name of the accused.

3.10 It is clear that there is no statutory provision allowing anonymity which is applicable to the facts of this case. If the plaintiffs were to have been entitled to be enabled to bring these proceedings under anonymity then it is clear that their entitlement in that regard could only stem from the Constitution itself.

3.11 In that regard it is clear that there are significant limitations on the types of constitutional rights which can be asserted as providing a balance to the undoubted heavy weight to be attached to the obligation that justice be administered in public. I have already referred to in *Re Ansbacher (Cayman) Limited*. Having considered the judgments of the Supreme Court in *Re R Ltd and Irish Times*, McCracken J., in that case went on to state the following, at p. 529,:-

> "No case has been cited to me in which a right to good name or a right to privacy can justify anonymity in court proceedings. A request for such anonymity was expressly refused by Laffoy J., in *Roe v. The Blood Transfusion Service Board* [1996] 3 I.R. 67, although that case was heard before *Irish Times Ltd v. Ireland* [1998] 1 I.R. 359. However, the rationale for refusing anonymity as set out in that case seems to me to remain perfectly valid."

3.12 In that regard McCracken J., went on to cite a passage from the judgment of Laffoy J., in *Roe v. Blood Transfusion Service Board*, at p. 71, in the following terms:-

> "The plaintiffs stated objective in seeking to prosecute these proceedings under a fictitious name is to keep her identity out of the public domain. In my view, in the context of the underlying rationale of Article 34 s. 1, the public disclosure of the true identities of parties to civil litigation is essential if justice is to be administered in public. In a situation in which the true identity of a plaintiff in a civil action is known to the parties to the action and to the court, but is concealed from the public, members of the general public cannot see for themselves that justice is done."

3.13 McCracken J. went on to say the following, at p. 530:-

> "In one sense it may violate a person's privacy and a person's good name to have them charged with a serious offence before the courts, but it could not possibly be said to be a violation of their constitutional rights if they are named, or that they have a constitutional right to be charged under an assumed name. Similarly, and I think it is analogous to the present case, if a person wishes to seek an injunction to restrain the publication of a libel, such person must make such application in their own name. There are of course cases envisaged by Article 34.1 where parties' names will not be disclosed, such as the names of defendants in criminal proceedings who are minors, or the names of parties to matrimonial proceedings. These are matters regulated by Statute."

3.14 McCracken J. further went on to reject the idea that it was necessary to approach the interaction of rights to privacy and rights to a good name on the one hand and the obligation to administer justice in public on the other hand, on the basis of harmonious interpretation. Rather McCracken J. determined that such rights could not be invoked for the purposes of restricting an entitlement on the public to full information about what happens in court. I expressed similar views in Independent Newspapers.

3.15 The following propositions seem to me, therefore, to be clear from the established jurisprudence.

3.16 Firstly, the obligation that justice, save in special and limited circumstances, be administered in public includes an obligation that all parts of the court process be available to the public. That means that the identity of the parties to proceedings, amongst other things, must, *prima facie*, be made public. See in particular *Roe v. The Blood Transfusion Service Board* and in *Re Ansbacher (Caymen) Ltd*.

3.17 Secondly, in the absence of an express statutory provision permitting either that all (or the appropriate part) of a relevant proceeding be heard otherwise than in public or prohibiting the publication of the identity of parties to the relevant proceedings, the only circumstances in which it has been established that a court may restrain a full publication of all that transpired during a court hearing (including the names of the parties) is where the restrictive court order concerned is necessary to prevent a real risk of an unfair trial, and where the damage which would result from not making the order concerned would not be capable of being remedied by appropriate directions to a jury or otherwise.

3.18 Thirdly, it seems clear that parties are not entitled to call in aid the undoubted constitutional right to a good name or to privacy, as a countervailing factor to the constitutional imperative that justice be administered in public. It is only where there is no other means of achieving the undoubted entitlement of parties to a just determination of their proceedings, that it has been established that a court has a constitutional entitlement to interfere with the obligation that justice be fully administered in public, and even then the court is constrained to interfere as little as possible with that imperative. Against that background it is necessary to consider the basis put forward on behalf of the plaintiffs for suggesting an entitlement to bring their proceedings anonymously.

4. The Plaintiffs Case

4.1 The plaintiffs assert an entitlement to bring these proceedings anonymously on two separate but connected basis, that is:-

> A. An entitlement to confidence in relation to revenue matters; and
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> B. an entitlement of access to the courts which, it is said, would, in practice, be lost, if an entitlement to bring the proceedings anonymously were not permitted.

4.2 It is appropriate to address both in turn. There is no doubt but that parties have a clear statutory entitlement, both under the provisions of the Taxes Acts and under the Official Secrets Act, in general terms, to have their tax affairs remain private. I am not, however, satisfied that there is any constitutional right, as such, to have one's tax affairs kept confidential. Any modern democratic state requires some level of taxation revenue from its citizens to enable it to function. The precise level of tax which requires to be levied in order to meet the necessary expenditures of Government and, indeed, the way in which the burden of that tax should fall is, of course, a matter to be determined by the Oireachtas. The issues associated with the level and distribution of the tax burden are the very stuff of the political process. They are no business of the courts. However, the fact that some revenue needs to be raised inevitably means that at least many citizens will have to bear the burden of paying some tax in order that the State can function. Where individuals or corporations do not meet their appropriate share, in accordance with the Taxes Acts, of that burden, then the remainder of compliant tax payers are likely to have to bear a disproportionately large burden. Whatever may be the position of compliant taxpayers, it is difficult to see how any constitutional entitlement could be asserted which would prevent the public generally from being made aware of the manner in which others have failed to meet their tax obligations.

4.3 Any entitlement which a non compliant tax payer might have to confidentiality in their tax affairs is confined, therefore, to a statutory entitlement. It is, of course, open to the Oireachtas to regulate the precise extent to which information concerning tax compliance of individual tax payers should be published. If the Oireachtas chooses to exclude from publicity a particular category of non compliant tax payers then that is, *prima facie*, a legitimate exercise by the Oireachtas of its law making function. There might, of course, be circumstances in which any such measure might be attacked on the grounds of impermissible discrimination or otherwise.

No such issues arise in this case.

4.4 While the plaintiffs have, therefore, a general right to privacy as recognised as an unenumerated right under the Constitution, that right does not, in my view, extend to their tax affairs as such. This is certainly so in a case where it would appear that, by their own admission, the plaintiffs were far from compliant tax payers. In those circumstances any right to confidence concerning their tax affairs which the plaintiffs may have stems from what they assert is, in substance, a technical defect in the relevant provisions of the Taxes Acts. On the basis of their case, statute law, as properly interpreted, confers on them an entitlement to confidence in relation to their tax affairs. The high water mark of any constitutional rights which the plaintiffs might be able to assert is limited, in my view, to an entitlement to have kept private any aspect of their affairs whose disclosure is not permitted by law for the time being in force. It is worth noting in passing that the tax affairs of many persons are disclosed in court because those tax affairs, or the financial details that underpin them, are necessary to a proper determination of issues arising in a wide range of litigation not least where calculation of losses is concerned. The proper administration of justice clearly outweighs any entitlement to privacy in those circumstances. That administration of justice is in public and while a court will normally be careful to ensure that there is no unnecessary exposure of a persons tax affairs, such exposure can and does occur in many cases. As I will also note (at paras. 4.7 and 4.8) similar disclosure occurs in many revenue proceedings and not limited to those involving alleged tax defaulters.

4.5 There is an issue as to the extent to which rights guaranteed by the Constitution or obligations specified in the Constitution (other than the right of an accused to a fair trial) can be called in aid by a party wishing to limit the full conduct of the administration of justice in public. On the basis of the authorities to which I have referred, the only established circumstance in which another constitutional provision has been held to confer an entitlement to limit a full public hearing, is to be found in *Irish Times*, where the countervailing entitlement of an accused to a fair trial was the right in question. Each of the five judges of the Supreme Court in that case delivered a separate judgment. An analysis of the judgments of Hamilton C.J., O'Flaherty J., Barrington J. and Keane J. reveals that, for understandable reasons, the only issue considered in any detail on this point was the interaction between the constitutional imperative contained in Article 34.1 to the effect that justice should be administered in public on the one hand, and the right of an accused to a fair trial on the other hand. It is fair to say that certain passages from the judgment of Denham J., at p. 399, do leave open the question of whether other rights might also be taken into account. As Denham J. noted:-

> "None of the rights in consideration are absolute. Where there are competing rights the court should give a mutually harmonious application. If that is not possible the hierarchy of rights should be considered, both as between the conflicting rights and the general welfare of society; *People v. Shaw* [1982] I.R. 1 at p.56."

4.6 However, it is clear that McCracken J. in *Re Ansbacher (Cayman) Ltd* came to the view that rights of privacy or rights to a good name are not sufficient to displace the constitutional imperative to the effect that justice be administered in public. I agree with the views expressed by McCracken J., to the effect that those rights are not of the same weighty nature (in distinction to the right of an accused to a fair trail) such as could displace the clear obligation to conduct the administration of justice in public. To the extent, therefore, that the plaintiffs may have a general constitutional right to privacy which applies to such matters concerning their revenue affairs as may be deemed confidential by statue and where there is no other overriding requirement (such as the proper determination of litigation), those rights cannot interfere with the clear and weighty constitutional obligation to the effect that justice be administered in public.

4.7 It is important to keep in mind the fact that revenue proceedings in this court are conducted fully in public and frequently involve the disclosure of not only the identity of the taxpayers concerned, but also such relevant details of the taxpayers finances as are necessary to determine the tax issues before the court. Such proceedings not only involve defaulting taxpayers but also those in respect of whose tax liability there may be genuine, and often complex issues, arising out of the proper interpretation of the Taxes Act.

4.8 It is illustrative to note that the true issue between the plaintiffs and the Revenue, which underlies the substantive question in this case, concerns whether, as a matter of the proper construction of the provisions of the Taxes Acts to which I have referred, the plaintiffs are liable to significant penalties. If the plaintiffs are so liable then it is common case that publication follows automatically. If the plaintiffs are not so liable, then publication would not seem to be permitted. However if the issue of the liability of the plaintiffs to pay the penalty concerned came before this court as a Revenue matter, there is no doubt but that any relevant proceedings would have been conducted fully in public. Thus if these plaintiffs had contested the obligation to pay a significant penalty, such proceedings, if they came to this court, would have been fully public. Such proceedings would, as I have pointed out, involve exactly the same point as the substantive issue which would have required to be determined in this case had it gone ahead. It is also worth noting that publicity attaches to revenue proceedings, and thus to the relevant financial affairs of the taxpayers concerned, even where the taxpayer is found by this court to be correct as to his or her contentions in relation to the tax liability concerned.

4.9 In all those circumstances I was not satisfied that any right to privacy which the plaintiffs might be able to assert could conceivably be of the weighty nature necessary to counter balance the constitutional imperative that justice be administered in public. The first issue raised on behalf of the plaintiffs did not, therefore, in my view, provide any basis for the asserted jurisdiction to direct that these proceedings might be maintained anonymously.

4.10 The second issue raised, however, did, in my view, give rise to a more serious questions.

4.11 Under this heading it was argued on behalf of the plaintiffs that an inability to maintain these proceedings with anonymity would amount, in substance, to a barrier to proper access to the courts. The plaintiffs' argument was to the effect that a requirement that they be named as plaintiffs would, in practical terms, deprive them of the opportunity to bring proceedings designed to protect their anonymity. There is, of course, a sense in which that assertion is factually correct. A finding by the court that the construction which the plaintiffs seek to place on the relevant provisions of the Taxes Acts was correct, would mean that the plaintiffs could not properly be included in the periodic list of tax defaulters published by the Revenue. However, the fact that the plaintiffs were tax defaulters who had entered into a settlement of the type which I have described earlier in this judgment would, of course, become public knowledge through the route of the court proceedings which, if not permitted to be brought anonymously would, of course, identify the plaintiffs as the tax defaulters concerned.

4.12 Thus, it was said, that where the purpose of the proceedings is to prevent the publication of a particular piece of information, then those proceedings are rendered largely useless if the party concerned has to be named in order to bring the proceedings in the first place.

4.13 However, similar considerations apply to a greater or lesser extent in many cases. It is, as McCracken J. pointed out in *Re Ansbacher (Cayman) Ltd*, the case that persons who wish to restrain an alleged defamation are required to be named and are, in practice, required to at least generally identify the defamatory material which it is believed is likely to be published. Plaintiffs who wish

to restrain the use or publication of undoubtedly confidential material arising in, for example, a commercial context, are also required to be named though it has to be said that it may be possible to frame such proceedings and the evidence presented in a way which does not disclose in detail the confidential information concerned. Nonetheless such parties will be required to bring into the public domain at least such a sufficient description of the material concerned as may be necessary for the determination of the proceedings and the making of any appropriate order.

4.14 Other examples could be given. There are, in addition, very many cases, such as the circumstances which underlay the decision of Laffoy J. in R*oe v. Blood Transfusion Service Board*, where parties may have wholly understandable reasons for not wishing to be identified. It may well be that in some such cases parties may, in practice, be dissuaded from invoking the jurisdiction of the court, precisely because of the publicity implications of so doing.

4.15 I appreciate that the instant case is, perhaps, somewhat stronger than *Roe v. Blood Transfusion Services Board*. In this case it was not simply that publicity attaching to the identity of the litigants may give rise to some collateral embarrassment which, from the subjective perspective of the litigant concerned, might lead such litigant not to bring the proceedings. Here, the intended proceedings were concerned with preventing the identification of the plaintiffs as tax defaulters. However, as I have pointed out, there are a number of other categories of litigation where the same situation applies. A plaintiff who wishes to restrain what is contended to be a libel or to restrain the publication of generally confidential information are cases in point. In no such case has it ever been suggested that an entitlement on the part of the potential litigant concerned to conduct their litigation anonymously, might be necessary to afford effective access to the courts on an anonymous basis, notwithstanding the clear constitutional imperative to the contrary. Similarly a dispute between the plaintiffs and the Revenue, as to the liability of the plaintiffs to pay the penalty which is at the heart of the substantive issue in this case, would, in this court, have had to be debated fully in public with an identical disclosure of the details of the plaintiffs' default.

4.16 I was not satisfied, therefore, that this case was any different from the examples I have given. It was not, therefore, in my view necessary to determine whether the circumstances in which other constitutional rights can be said to justify a departure from the constitutional imperative in favour of the conduct of litigation in public, are confined to cases where the other constitutional requirement or right concerned is the entitlement of an accused in a criminal process to a trial in due course of law. It could well be said that, if there were circumstances which might prevent a court in civil proceedings from reaching a just determination because of publicity attaching to part of the process, then those circumstances too might confer on the court a jurisdiction to restrain, in a proportionate manner, the publicity concerned. Such a situation could well arise in civil proceedings before a jury, where it is also possible that there may be a so-called "trial within a trial" concerning legal issues or issues concerning the admissibility of evidence which is conducted in the absence of a jury. It is, it must be said, difficult to envisage circumstances where similar considerations would apply in relation to a trial being conducted by a judge alone.

4.17 However, be that as it may, I was not satisfied that the fact that publicity attaching to proceedings might be, understandably from a potential plaintiff's perspective, counterproductive to the benefit of bringing the proceedings is, of itself, a reason why such a plaintiff should be entitled to bring the proceedings anonymously.

4.18 There is, in my view, a distinction of some importance to be drawn between, on the one hand, a case where the benefit of bringing proceedings (even if they be successful) would be impaired (even to a significant extent) by the necessity to have the proceedings conducted in full publicity, and on the other hand, a situation where the very outcome of the proceedings themselves could be affected by such publicity. Each of the judgments of the Supreme Court in *Irish Times* emphasised the heavy constitutional weight to be placed on ensuring that the administration of justice is conducted in a fair manner. Publicity which might affect the fair and just result of proceedings has the potential, therefore, to be a significant interference with the administration of justice. In those circumstances significant weight has to be attached to a consideration of measures which may be designed to promote the likelihood of a fair and just result to litigation. I was not satisfied that an equivalent weight ought be attached to circumstances where there was no risk that the ultimate determination of the court, in the exercise of the administration of justice, would be other than fair, but where it might be said that publicity attaching to proceedings might, even to a significant extent, devalue the benefit of bringing the proceedings on anything other than an anonymous basis.

5. Conclusions

5.1 For the reasons which I have sought to analyse I was not, therefore, satisfied that the court had any jurisdiction to permit proceedings such as those intended by the plaintiffs to be conducted on an anonymous basis. I was not satisfied that any entitlement to confidentiality concerning their tax affairs which the plaintiffs might assert could be of sufficient weight to countervail, even to a limited extent, the constitutional imperative to the effect that justice be administered in public. Nor was I satisfied that a requirement that the proceedings be brought in the names of the plaintiffs amounted to an infringement of the plaintiffs undoubted right of access to the courts. The fact that the plaintiffs might be discouraged from bringing proceedings if not permitted to bring them anonymously was not, of itself, in my view, a sufficient reason to give rise to a jurisdiction to permit the proceedings to be brought anonymously. Nor, in my view, was the fact that some of the purpose of the proceedings might be lost, in practice, a sufficient factor to give rise to a constitutional jurisdiction to permit these proceedings to be brought anonymously.

5.2 For those reasons I was not persuaded to permit the plaintiffs to bring these proceedings other than in the normal way in their own names. As previously indicated, having so ruled the plaintiffs decided not to press ahead with the substantive proceedings.