

THE HIGH COURT

2001 No.72 SS

IN THE MATTER OF THE VALUATION ACTS 1852 TO 1998

AND IN THE MATTER OF THE VALUATION OF PREMISES AT MAP REFERENCE 10 ab, 11 ab, 12 ab, 13, 14, 15, 16 DOWD'S LANE
(INCL.6a Abbey and 11b NELSON), UD: Clonmel East Urban, Clonmel, Co.Tipperary

APPEAL NO.V A 97/6/008

BETWEEN

BULMERS LIMITED (FORMERLY SHOWERINGS (IRELAND) LIMITED)

APPELLANT

AND
THE COMMISSIONER OF VALUATION

RESPONDENT

Judgment of Quirke J.delivered the 29th day of July, 2005.

1. This is a case stated by the Valuation Tribunal for the opinion of the High Court in accordance with the provisions of s.5 of the Valuation Act, 1988 pursuant to a request in writing dated the 27th September, 2000.The request was addressed to the Chairman of the Valuation Tribunal by the appellant which was dissatisfied by the determination of the Tribunal on a point of law.This appellant's dissatisfaction was duly expressed to the Tribunal on the 20th September, 2000, immediately after the determination of the appeal by the Tribunal.

2. The case stated, having been amended by agreement and signed by the Chairman of the Tribunal has set out the facts which have been agreed or found, the submissions which have been made to the Tribunal and the determination of the Tribunal on the issues before it.Two questions of law have been referred to this Court for determination.

THE FACTS

3. The property in issue comprises 56 tanks or vats interconnected by pipework and pumps.The tanks and vats are used by the appellant company at its cider production plant situate at Clonmel in Co.Tipperary.There is a dispute between the parties as to whether these tanks or vats and the pipework and pumps which connect them are rateable.

4. The appellant is a large company which manufactures or produces cider for consumption within this jurisdiction and for export.Part of its production plant is located at Clonmel in an area known as Dowd's Lane.The remainder of the appellant's production plant and its bottling plant is situated at a location called Annerville outside Clonmel.

5. The appellant's premises comprise an old warehouse building, (which houses original timber vats used in the production of cider), together with a filtration area and a boiler room.The building is constructed with brick and rubber masonry walls concentrate floors and a combination of roof coverings including slates, corrugated asbestos and metal decking.

6. The premises have been used by the appellant company for its operations since 1938.Immediately adjoining the building there are concrete tanks which were installed during the mid 1950's.These vessels are constructed with mass concrete walls which are lined internally with bitumen.They have asphalt covered concrete roofs.

7. Opposite the original building and on the eastern side of Dowd's Lane is the crushing plant and apple yard together with a three story building which accommodates staff canteen and toiletry facilities.The crushing plant is constructed with concrete walls and steel decking.It has a concrete floor and a barrel type corrugated iron roof.The new three-storey building immediately fronting the crushing plant is constructed with concrete block walls, concrete floors and an asbestos slated roof.Twenty stainless steel tanks have been erected on the premises.These are cylindrical in shape with heights varying from 25 to 40 feet.Eleven of these tanks have outer steel cladding.

8. In addition to the 20 stainless steel tanks there are 22 timber vats on the premises.14 concrete tanks are on the premises but are now disused.

9. The capacity of the stainless steel tanks is estimated to be between 1.044 million gallons and 1.037 million gallons.

10. The capacity of the timber vats is estimated to be between 382,800 gallons and 385,600 gallons.

11. The capacity of the concrete tanks is estimated to be between 789,200 gallons and 791,486 gallons.Some wooden vats which have also been described as "disused" are estimated to have a capacity of 32,000 gallons.

12. All of the vessels on the site including all of the tanks are connected by a series of stainless steel pipe work of various diameters.This pipe work is located both on the inside and on the outside of the buildings and it stretches across Dowd's Lane.The finished product produced on the premises is a high strength 10% alcohol product which is transported by road in bulk containers to the appellants' plant at Annerville where it is diluted to the appropriate alcoholic strength and bottled.Cider is made from apple juice.The production and supply of apple juice is seasonal and therefore the vast majority of production takes place during a short period of time.

13. The process for the production of cider can be summarised as follows:

(a) Apples are brought to the appellants' plant and are washed and channelled by water to a "miller" where they are chopped into small pieces.A pre-dosed quantity of milled apples are placed in a "cheese" (a wooden slat containing a hair)

(b) The slats go into a hydraulic press which squeezes juice from the milled apples.After a second pressing the "cheese" is dismantled and the pomace is remilled and a second cheese built so as to extract the greatest amount possible of juice from the apples.

(c) The juice is then pumped through a 10,000 gallon wooden receipt vat.During this process juice is extracted from,(i), the hairs, (ii), the vat and (iii), the pipe work.The 10,000 gallon receipt vat is used to accommodate this process.A chemical known as Somax is added at this stage for the purpose of eliminating undesirable yeast.Somax is sulphur dioxide. It kills non-fermenting yeast.

(d) The juice is allowed to stand in the 10,000 gallon receipt vat for approximately 24 hours in order to allow the Somax to take effect.

(e) The juice is pumped from a receipt vat to a fermentation vat. Fermentation commences by reason of the presence of yeast which has been allowed to accumulate

(i) during the crushing stage,

(ii) during the transfer and

(iii) by reason of contact with the tanks.

(f) A commodity called starch hydrolysed is added at different stages during fermentation for the purpose of bringing the gravity to an appropriate level, and increasing the alcohol content. This commodity is added in three or four different stages to the fermentation.

(g) At this point another chemical called biopectinase is added. This is an enzyme which is intended to break down pectin which, if not broken down will cause filtration problems.

(h) The receipt vats are required (a) to pick up yeast (b) as a measure and (c) in order to enable Somax to be added to the product.

(i) The fermentation vat is required (a) to enable fermentation to occur (b) to enable starch hydrolysed to be added and (c) in order to enable biopectinase to be added.

(j) Thereafter the juice is trans-pumped to a stainless steel tank where the fermentation is ongoing until all of the sugar has been converted into alcohol. Samples are taken during fermentation on a daily basis for analysis, both sensory and chemical.

(k) Primary determination takes six to eight weeks. During this process carbon dioxide is produced. An electrically operated extractor fan removes this carbon dioxide.

(l) Vent valves which are preset within the stainless steel vats vent the carbon dioxide to the atmosphere during fermentation.

(m) There are manways at the top of the fermentation vents to allow for the addition of Somax and Biopectinase.

(n) In the fermentation vats there are entry points to enable starch hydrolysed to be pumped in during fermentation. All tanks have the appropriate accessories to enable this process to be completed.

(o) A week or two after fermentation the supernatant is pumped to another vat. This is called "*racking*" and it occurs in January of each year after the primary fermentation process is complete. The racking takes place from the stainless steel vat into either other stainless steel vats or into wooden vats (depending upon capacity and availability). The product at this stage is referred to as green cider which is not organoleptically suitable for cider production. Accordingly it is left to mature for a period between eight and fifteen months during which time a process known as malolactic fermentation occurs. This reduces the acidity of the cider and gives rise to a more complex flavour. This maturation process results in the production of the bulk blend. A trained sensory panel evaluates the cider on a monthly basis.

The appellant company begins to use cider between eight and fifteen months after fermentation. The average period of secondary fermentation (malolactic fermentation) is four or five months. Organoleptic analysis is carried out on a monthly basis. (p) The final stage is filtration where the ciders are filtered by micro-filtration from one vat to another. The purpose of this is to remove yeast. The product is pumped from the vat into a balance tank and from there pumped through a micro-filter. This is a concentration process where yeasts are concentrated into a thick sludge which is then pumped away. The micro-filtered product is transferred to another tank where the maturation process continues until the product is ready to be blended.

(q) The product is micro-filtered once and is then transferred as a filtrate into a receipt vat. The cider is pumped from a tank to a filtration plant and then back to another tank. A pump provides the motor force to remove the cider from a vat to the filtration plant and then back to another vat.

(r) The process is categorised by conscious movement of the material. The micro-filter area will always be active. Once one fermentation has been filtered though the next fermentation is following as is the next (although filtration acts on any one fermentation lot only once).

(s) The product, which is then called a "*bulk blend*" (fresh juice cider) is then blended with a concentrate cider at a ratio of 50/50. It is then brought through another filter which is called a sheet filter. This is required in order to remove any remaining yeast which may have been picked up during the final maturation process. The product is then filtered into a stainless steel tank before going forward for production as finished cider.

14. In summary the product is racked once, is micro-filtered once and is subjected to sheet filtration once. There is continuous movement of product within the plant although the same quantity of products is not subject to the same process more than once. It is estimated that some 375 movements occur between vessels throughout the entire production process of between 2 million and 2.5 million cans of ciders each year. Pumps are used to accommodate the movement from tank to tank and from vat to vat etc.

15. After the fresh juice fermentation has blended with the concentrate fermentation on a 50/50 basis it is filtered into a steel tank and then transferred into a tank which brings the product to the appellants' plant at Annerville which is used to make various ciders.

16. There was a difference between the characterisation of the process by Mr. Herlihy on behalf of the appellant and Mr. Maher on behalf of the respondent.

17. Mr. Herlihy said that the process was characterised by constant movement of material from one vessel to another for the purposes of the various treatments. He felt that the process required the use of force by mechanical means for the achievement of the specified purpose of the production of cider. He said the yeast in the vessels plays an integral part in the process. This applies from the first filling of each vessel and to each transfer to each subsequent vessel through which the cider passes before the product eventually reaches the final vessel prior to the bottling, canning or kegging.

18. Mr. Maher felt that the product was held in storage in an inert state for the vast majority of time. He felt that the prime purpose of the tanks was to provide containment whereby the process of production is allowed to take place. He said that the tanks and vats were used for the containment of the finished product prior to its being marketed.

DETERMINATION OF THE TRIBUNAL

19. The Tribunal determined:

(a) the tanks or vats did not constitute machinery within the meaning of S.7 of the Annual Revision of Rateable Property (Ireland) Amendment Act, 1860 as amended by S.7 of the Valuation Act 1986;

(b) that the tanks or vats did not fall within the proviso in reference number no.1 in the schedule to the said Act of 1860 inserted by S.8 of the Valuation Act 1986.

THE QUESTIONS REFERRED TO THE HIGH COURT

20. The questions which have been referred to this court are:

(a) Whether the findings of fact made in the judgment of the Valuation Tribunal issued on the 20th September, 2000, are supported by the evidence and,

(b) whether the Tribunal erred in law in determining, as it did.

RELEVANT STATUTORY PROVISIONS

21. Section 7 of the Valuation Act 1986 provides as follows: "7.- The following section is hereby substituted for section 7 of the Act of 1860:

"7.(1) (a) In making the valuation of any mill or manufactory, or building erected or used for any such purpose, the Commissioner of Valuation shall in each case value the water or other motive power thereof, but shall not take into account the value of any machinery therein, save only such as shall be erected and used for the production of motive power. (b) For the purposes of this subsection, machinery erected and used for the production of motive power includes electrical power connections.

(2) The Commissioner of Valuation shall value plant falling within any of the categories of plant specified in the Schedule to this Act (inserted by the Valuation Act, 1986).

(3) In valuing plant referred to in subsection (2) of this section, the Commissioner of Valuation shall not take into consideration a part of any plant which moves (or is moved) mechanically or electrically, other than a telescopic container."

22. The "categories of plant" referred to in paragraph 7 (2) of the Act of 1860 (as substituted) are contained within a Schedule which has been inserted (pursuant to the provisions of s.8 of the Act of 1986), into the Act of 1860.

23. The relevant category of "plant" for the purposes of these proceedings is the category bearing the reference No.1 within the Schedule which is described in the following terms:

"All constructions affixed to the premises comprising a mill, manufactory or building (whether on or below the ground) and used for the containment of a substance or for the transmission of a substance or electric current, including any such constructions which are designed or used primarily for storage or containment (whether or not the purpose of such containment is to allow a natural or a chemical process to take place), but excluding any such constructions which are designed or used primarily to induce a process of change in the substance contained or transmitted."

24. Section 2 of the Valuation Act 1988 provides for the establishment of the Valuation Tribunal to hear and determine appeals under certain provisions of that Act.

25. Subsection (3) of s.2 provides:

"Subject to a right of appeal to the High Court on a question of law, the determination of the Tribunal shall be final."

26. Section 5 of the Act of 1988 makes provision for the statement of a case to the High Court where any party to an appeal heard by the Tribunal is:

"...dissatisfied with the determination as being erroneous in point of law..". Subsection 6 of s.5 of the Act of 1988 provides that:

"(6) The High Court shall hear and determine any question or questions of law arising on the case, and shall reverse, affirm or amend the determination in respect of which the case has been stated, or shall remit the matter to the Tribunal with the opinion of the Court thereon, or may make such other order in relation to the matter as the Court thinks fit."

27. Subsection (7) of section 5 of the Act of 1988 permits the High Court to cause the case to be sent back to the Tribunal for amendment where it is appropriate. In these proceedings the High Court (Ó Caoimh J.), by order dated 9th October, 2002, directed that the case be sent back to be amended by the Tribunal. The case was amended pursuant to the terms of that order.

THE ROLE OF THE COURT

28. Both parties have adopted the principles identified by the High Court (Kelly J.) in *Premier Periclase Limited v. Commissioner of Valuation* (Unreported, High Court, Kelly J. 24th February, 1999) as to the approach to be taken by this court to the issues which it is required to determine.

29. In that case at p.26 the court adopted the view of the Supreme Court (Hamilton C.J.) at p.37 of *Henry Denny and Sons (Ireland) v. Minister for Social Welfare* [1998] 1 I.R.34 that the courts should be slow to interfere with decisions of expert administrative tribunals except when their "...conclusions are based on an identifiable error of law or an unsustainable finding of fact..."

30. Kelly J. continued at p.27:

"There is no doubt but that the Valuation Tribunal is the type of body which Hamilton C.J. had in mind when expressing the views which I have just quoted from his judgment in the Denny case. In the instant appeal, the Tribunal consisted of its Chairman who is a Senior Counsel and two deputy chairmen. One is a barrister and the other is a fellow of the Royal Institute of Chartered Surveyors. This Court should be slow to interfere with this decision. It should do so only on the basis of an identifiable error of law or an unsustainable finding of fact."

31. It follows that the court should not interfere with the determinations and findings of the Valuation Tribunal in this case unless it is satisfied that The Tribunal has made an identifiable error of law or an unsustainable finding of fact.

THE APPELLANT'S CLAIM

32. Mr. Collins S.C. on behalf of the appellants argues that the Tribunal has made unsustainable findings of fact and is in error on point of law by finding:

(1) that the tanks, vats and equipment which are the subject of these proceedings do not comprise "machinery" (within the meaning ascribed to that word by s.7 (1) (a) of the 1986 Act) and;

(2) that the tanks, vats and equipment did not come within the category of plant which is excluded from rateable valuation by the provisions of Reference No.1 of the Schedule to the Act of 1860.

1. "Machinery" within the meaning of the Act.

33. In support of his contentions on this issue Mr. Collins S.C. cites the following extract from the decision of the Supreme Court (O'Higgins C.J.) in *Beamish and Crawford v. Commissioner of Valuation* [1980] I.L.R.M.149 at p.151:

"These decisions and others which were cited to the learned President of the High Court seem to indicate a fairly general judicial view that the word 'machine' within the section connote apparatus by means of which force is applied, modified or used by mechanical means for a specific purpose, whether such apparatus is moving or fixed, and that in determining whether the apparatus so qualifies as a machine or machinery the components should not merely be regarded separately or piecemeal but as integral parts of the process in which they are used. I think that is the correct test and I note that, generally speaking, this was the test in fact applied by the learned President. He added two other considerations, namely, that it should be a relevant though not a determining factor that the equipment be used in actually processing and that it should not be excluded merely by reason of the fact that it is for part of the time used for storage only. I would agree that these additional considerations are proper although I think they are probably included in the general rule or view which I have stated."

34. He points to the observation of the tribunal (at para 23 of its judgment) that;

"A distinction must be drawn between other items of plant, the interconnecting pipes and the vat man ways on top of each vessel. What is in issue is not these items or indeed other items howsoever interlinked or integral these might be to the overall process; it is the tanks/vats that we are solely concerned with."

35. He says that this passage of the Tribunal's judgment demonstrated a fundamental and fatal error of law by the Tribunal. He contends that the Tribunal was obliged to consider the tanks/vats "as integral parts of the process in which they are used..". He says that the tribunal, when making its determination, was not entitled to be "solely concerned with" the tanks/vats.

36. The Tribunal made the observation about which Mr Collins complains at para 23 of its judgment. Immediately prior to that observation, (at para 22), the Tribunal made its definitive finding on the "machinery" issue. In its judgment (at para.8) the Tribunal referred expressly to the decision of the Supreme Court in *Beamish and Crawford* and to the following extract from the judgment of O'Higgins C.J. at p.151:

"In determining whether the apparatus so qualifies as a machine or machinery the components should merely be regarded separately or piecemeal but as integral parts of the process in which they are used."

37. It declared that its determination on this issue was expressly based upon the principles outlined by successive courts in the cases of *Pfizer Chemical Corporation v. Commissioner of Valuation* (Unreported, High Court, Costello J., 9th May, 1989), *Siúicre Éireann C.P.T. v. Commissioner of Valuation* [1992] I.L.R.M.682, and *Irish Refining Plc. v. Commissioner of Valuation* [1995] 2 I.L.R.M.223.

38. In *Pfizer Chemical Corporation v. Commissioner of Valuation* (supra) the High Court (Costello J.) considered whether five tanks which were used for the reception of molasses could be categorised as "machinery" for valuation purposes.

39. He declared *inter alia* at p.14 that:

"What falls for consideration is whether the special features of the tanks to which I have referred mean that the tanks should be regarded as 'machinery'. I think so to hold would do violence at once to the English language and common sense. These receptacles are tanks – not machines. The fact that items of equipment are installed in them to allow the molasses to be agitated, to permit it to be heated, and to permit the molasses to be moved from one tank to another and subsequently to the manufacturing plant does not have the effect of altering their character."

40. The Tribunal referred, with approval, to that extract noting that the passage had been endorsed by the Supreme Court in *Siúicre*

Éireann Teoranta C.P.T.v.Commissioner of Valuation [1992] I.R.L.M.682, and "...has not been risiled from since...".

41. The central finding fact by the Tribunal is to be found at paragraph 22 of its judgment.It was a finding of fact.

42. Sub-para.(c) of para 22 provides that

"...We are satisfied beyond question that it would be impossible to describe these tanks and vats as machinery using any understandable meaning or definition, no matter how wide and how broad of the words 'machine/machinery'.Accordingly we have no hesitation in rejecting this submission and in determining that these items are plant and are thereby prima facie rateable unless otherwise excluded by the proviso as contained in Ref.No.1."

43. Mr.Collins S.C.says that the Tribunal's finding is unsustainable.I cannot accept his contention.

44. In *Irish Refining Plc.v.Commissioner of Valuation* (supra) the High Court (Geoghegan J.) considered whether certain equipment at Whitegate, in Co.Cork, which included tanks, pipelines, steam-raising plant, concrete staging and towers constituted "machinery" for the purposes of the Act.

45. Having referred to the earlier authorities on the issue Geoghegan J. observed (at p.226) that:

"It is not very easy to reconcile all these decisions with each other....in my view, only limited reliance can be placed on previous case law.One of the reasons why it is not very easy to reconcile the cases is because each was decided, and properly decided, on its own facts.But I am satisfied that one clear principle does emerge.The fact that tanks or receptacles are fitted with equipment which enables some activity to take place within does not necessarily alter their character as tanks and convert them into machines.To repeat the expression used by McCarthy J.in the Síúicre Éireann case, if the character of the tank 'predominately is one for storage purposes' it is a tank and not a machine.As to whether the predominant purpose is storage or not depends, in my view, on whether the activity within the tank is itself a proximate part of the manufacturing process or is merely a process for retaining or maintaining the contents of the tank in a particular condition in preparation for the core manufacturing process."

46. The task with which the Tribunal was confronted in the instant case was to decide whether particular tanks and vats within the appellant's premises, (which were inter-connected by pipes and other equipment), constituted "machinery".

47. Adopting, which I do, the passage cited above from *Irish Refining Plc*, it is clear that the Tribunal was required to decide that issue on the particular facts of the case.

48. The Tribunal carefully reviewed the judicial authorities on the issue.It was correct to do so.

49. I can find nothing within the Tribunal's determination on the issue which is inconsistent with the principles identified in those authorities.

50. It was not inaccurate for the Tribunal to point out that it was the tanks/vats which were the subject of its investigations.

51. Case law on this issue has repeatedly confirmed that the fact that tanks or receptacles have been fitted with equipment which enables other activities to take place does not alter their character as tanks and convert them into machines.

52. The tribunal was entitled to consider, on the evidence whether the tanks under consideration were, in fact, tanks or were "integral parts" of machinery.

53. The tribunal concluded, on the evidence that the tanks and vats under review were and remained tanks or receptacles.They were not "machines" or the integral parts of "machinery".That conclusion was a finding of fact based upon the correct application of the appropriate principles of law.

54. Mr.Collins S.C.says that the Tribunal, in its judgment, expressed uncertainty, wondering aloud whether the principles identified in "pre- 1986 case law" should still be applied to this issue, having regard to the enactment of the 1986 Act.

55. He says that since the Supreme Court in *Denis Coakley and Co.Ltd.v.Commissioner of Valuation* [1996] 2 I.L.R.M.90 applied the principles identified in *Beamish and Crawford* as late as 1996 the uncertainty expressed by the Tribunal comprised an error of law on its part.

56. If the Tribunal's "uncertainty" comprised an error of law on the part of the Tribunal then it was an error shared by the High Court (Geoghegan J.) in *Irish Refining v.Commissioner of Valuation* (supra).The Court, in that case, (decided in 1995), expressed doubt as to whether reliance could be placed upon "previous case law" in respect of the same issue.

57. The Tribunal did, however, apply the "...one clear principle.." identified by Geoghegan.J.in that case in respect of tanks and receptacles of the type under review.

58. Accordingly, the court cannot identify any unsustainable finding of fact by the Tribunal on this issue or any error of law on the part of the Tribunal in the application of the correct principles of law to the facts which it has found when considering the question whether the tanks, vats and equipment under review comprised "machinery" for the purposes of s.7 of the Act of 1986.

The answer to the Tribunal's first question therefore is "Yes".

2."REFERENCE NO.1" IN THE SCHEDULE

59. Section 7 of the Act of 1986 provides, *inter alia*, that certain categories of plant, (which are specified in the Schedule to the Act of 1860, shall be rateably valued.

60. The categories of plants include (at reference no.1 in the Schedule)

"...constructions...used for the containment of a substance or for the transmission of a substance ... including any such constructions which are designed or used primarily for storage or containment (whether or not the purpose of such containment is to allow a natural or chemical process to take place..."

Importantly the categorisation continues"*...but excluding any such constructions which are designed or used primarily to induce a process of change in the substance contained or transmitted.*"

61. The effect of the provision, therefore, is to create a category of plant which will be excluded from rateable valuation. Accordingly, "constructions" which are "used primarily for storage or containment" will be rateably valued whereas those "used primarily to induce a process of change in the substance contained..." are excluded from that category and will not be so valued.

62. In its judgment the Tribunal described both the equipment and the fermentation process in detail.

63. At paragraph 26 of its judgment the Tribunal concluded that:

"It seems to us almost inescapable that these vessels are used or designed primarily for storage or containment and not to induce a process of change."

64. Mr.Collins S.C.on behalf of the appellant contends that the Tribunal's conclusion comprises a finding of fact which is unsustainable or alternatively a finding of fact which no reasonable Tribunal could have reached on the evidence.

65. He challenges the Tribunal's finding contending that the Tribunal has misunderstood the nature of the process of fermentation and has failed to take into account the various mechanical processes of filtration and the pumping of liquid from one container to another.

66. In these proceedings it is not the function of the court to interfere with findings of fact made by the Tribunal on the grounds that, on the evidence, the court would have reached a different finding.The fundamental question which the Tribunal was required to determine was whether the "constructions" (i.e.the tanks and vats) which are the subject of these proceedings had been "designed or used primarily to induce a process of change in the substance contained therein."

67. If there were, then they were not subject to rateable valuation.If they were primarily designed or used "for storage or containment" they were subject to valuation.

68. It has not been contended that the "constructions" were "designed" to induce a process of change in the apple juice.It was contended that they had been primarily "used" for that purpose.

69. In making its determination the Tribunal was required to take into account that primary use for storage or containment could include contentment in order to "*...allow a natural or a chemical process to take place*"

70. Having heard the evidence adduced in the appeal and considered the submissions made on behalf of the parties the Tribunal posed the following question at paragraph 24:

"... can it be said in these circumstances that the process of change which undoubtedly takes place is attended upon or caused by the vessel being designed or being used primarily to induce that process or is it more accurate to advance the proposition that once containment of the apple juice is achieved then what follows, whether it be a natural or a chemical process, is essentially as a consequence of that containment with little else."

71. Having considered that question it concluded that "*the facts ... fall far short of justifying the legal criteria of applying to this fermentation process the proviso contained within reference no.1*".

72. Later (at para.26) the Tribunal continued:

"...it seems to us almost inescapable that these vessels are used or designed primarily for storage or containment and not to induce a process of change.If it were otherwise not only would the process of change take place but there would be some means or method inherent in the structure itself which would induce that process.What occurs within the pipes from one tank to another being irrelevant."

73. Mr.Collins contends that the evidence adduced at the appeal demonstrated overwhelmingly that the purpose for which the "constructions" were used was to induce a process of change in the apple juice.He says that a finding to the contrary by the Tribunal was an unsustainable finding which no reasonable Tribunal could have reached on the evidence.

74. It is important to note that when considering whether or not the primary use of the "construction" was "*to induce a process of change in the substance*" the Tribunal was required to take into account that "containment" as a primary use could include containment "*where the purpose of containment is to allow a natural or a chemical process to take place.*"

75. Bearing that in mind, it is difficult to accept that there was no evidence before the Tribunal which would justify its finding that the primary use to which the "construction" (i.e.the tanks/vats), was put was not to induce a process of change but to facilitate storage or containment.That finding was not, in the circumstances, illogical or irrational.

76. I share the view expressed by Kelly J.in *Premier Periclase Ltd.v.Commissioner of Valuation* (supra), that, when determining whether the "constructions" were designed or used primarily to induce a process of change the Tribunal was making "*determinations of primary fact*".It was open to the Tribunal to make those findings on the basis of the evidence before it.

77. It is not open to this court to interfere with the Tribunal's findings of fact unless the court is satisfied that there was no evidence to justify such findings.

78. As Kelly J.continued at p.28:

"If, ...the Tribunal's findings in relation to each of the tanks can be regarded as inferences to be drawn from primary facts, then it appears to me that the Commissioner would have to satisfy me that no reasonable Valuation Tribunal could draw those inferences from the evidence before it in order to have this Court interfere with the findings."

79. In the instant case I am satisfied that there was evidence before the Tribunal sufficient to enable it to make the findings which it made.Similarly if the conclusions of the Tribunal can be classified as inferences to be drawn from primary facts then I am not satisfied that they were inferences which no reasonable Valuation Tribunal could draw.

80. Consequently the court cannot interfere with the decision of the Tribunal on that issue. If, as Mr. Collins S.C. argues, the conclusions of the Tribunal can be characterised as determinations of law, no error of law has been identified which would enable the Court to interfere with the tribunal's decision.

It follows that the answer to the Tribunal's second question is "No".