



THE COURT OF APPEAL

Ryan P.
Irvine J.
Hogan J.

2016, 131

BETWEEN

PERMANENT TSB PLC

PLAINTIFF /
RESPONDENT

- AND -

DAVID LANGAN

DEFENDANT /
APPELLANT

JUDGMENT of Mr. Justice Gerard Hogan delivered on the 28th day of July 2016

1. If a property is not rateable by virtue of the Valuation Act 2001 (“the 2001 Act”) is the jurisdiction of the Circuit Court in respect of proceedings for possession of a dwelling brought by a mortgage lender thereby excluded? This is in essence the principal issue stated for the consideration of this Court by the High Court (Baker J.) pursuant to a case stated which she made under s. 38(3) of the Courts of Justice Act 1936 (as amended). The issue is one of very considerable practicable significance and difficulty and, as will be seen from this judgment, it has already given rise to two separate judgments in the High Court which arrived at different conclusions on this point.
2. At the outset it is only appropriate to pay tribute to the very high quality of the written and oral submissions which were presented to this court on behalf of the parties. The Court is indebted to counsel for the elegant and incisive way in which this difficult point of interpretation has been prepared and presented.

3. Before considering the legal issues, it is necessary first to set out the relevant facts. In February 2008, the defendant, Mr. David Langan, entered into a mortgage with the plaintiff bank, Permanent TSB plc ("PTSB"), whereby five registered properties and one unregistered property were mortgaged to PTSB. Five of the properties are situate in north Co. Dublin and the other property is located Smithfield, Dublin 7. It is not in dispute that Mr. Langan subsequently defaulted on repayments and proceedings for possession of the six properties were instituted in the Circuit Court by PTSB.

4. After the enactment and coming into force of the Land and Conveyancing Law Reform Act 2013, further proceedings for possession in respect of the same properties were instituted in the form of two Civil Bills in the Circuit Court and the earlier proceedings were discontinued.

5. The two Civil Bills in question both contain recitations in the pleadings to the effect that "the annual rateable valuations of each of the said properties does not exceed €253.95". In both sets of proceedings PTSB have exhibited two separate letters from the Valuation Office in respect of all six properties, which correspondence stated that while the properties were not yet valued for rating purposes, it was nonetheless certified that the rateable valuation of said buildings "will not exceed €253.95". One of the letters from a Ms. Mary Regan of the Valuation Office may be regarded as representative:

"I refer to your application for a certificate showing the rateable valuation for the above property.

I regret that I am unable to issue such certificate as the property is not as yet valued for rating purposes, however, if a building is erected/re-constructed in

accordance with the dimensions shown on the deed plan submitted, I certify that the rateable valuation of the said buildings will not exceed €252.95.”

6. In February 2015 the Circuit Court (Her Honour Judge Linnane) granted orders for possession in respect of all six of these properties and dismissed all the defences raised by Mr. Langan. Her Honour Judge Linnane, noted that none of these properties was the principal private residence of Mr. Langan. No point was taken in the Circuit Court in relation to the jurisdiction of that court to hear the proceedings.

7. Although no stay was sought or granted against these orders, Mr. Langan duly appealed to the High Court. In the meantime, however, on 20th May 2015 Murphy J. delivered her judgment in *Bank of Ireland Mortgage Bank v. Finnegan* [2015] IEHC 304. The effect of the decision in *Finnegan* was that Murphy J. held that the Circuit Court did not have jurisdiction to hear possession suits in respect of un-rateable properties. In the light of that decision Mr. Langan then put in issue the jurisdiction of the Circuit Court to grant the orders for possession which he was now appealing. Mr. Langan swore a subsequent affidavit in December 2015 in which he stated that all the properties in question were dwellings which had been constructed after 2002 and were, accordingly, by virtue of provisions contained in the 2001 Act which I will later set out, unrateable.

8. Before the present appeal could be heard by the High Court, there was then another development. On 26th November 2015 Noonan J. delivered his judgment in *Bank of Ireland Mortgage Bank v. Hanley* [2015] IEHC 738. In *Hanley*, Noonan J. took a different view to that which had been taken a few months earlier by Murphy J. in *Finnegan* and he concluded that the Circuit Court did have such jurisdiction in such circumstances.

9. When this matter came on for hearing before Baker J. on 1st February 2016 Mr. Langan sought a case stated to this Court in view of the two conflicting decisions given by different High Court judges in respect of this jurisdictional issue. Having reserved her decision briefly, Baker J. subsequently informed the parties on 4th February 2016 that she intended to state a case to this Court.

The questions stated by the High Court judge

10. Baker J. accordingly stated five separate questions for consideration of this court and they are as follows:

- (1) If a property is not rateable by virtue of the Valuation Act 2001, or otherwise, is the Circuit Court's jurisdiction under s. 22(1) of the Courts (Supplemental Provisions) Act 1961 excluded?
- (2) In the alternative does the Circuit Court have jurisdiction by virtue of the property not having a rateable valuation that exceeds €253.95?
- (3) Is the Circuit Court entitled to proceed to judgment, unless it is shown by evidence that there is a rateable valuation which exceeds €253.95?
- (4) If there is no certificate of rateable valuation, how does the court exercise its power to estimate rateable valuation under s. 31 of the County Officers and Courts (Ireland) Act 1877?
- (5) Is the plea in a Civil Bill taken together with evidence on affidavit of a provisional estimate of rateable valuation, sufficient "legal evidence" on which the court can make a estimate rateable valuation for the purposes of s. 31 of the County Officers and Courts (Ireland) Act 1877?

The jurisdiction of the Circuit Court

11. Article 34.3.4 of the Constitution provides that: "The Courts of First Instance should also include Courts of local and limited jurisdiction with a right of appeal as

determined by law”. As the Circuit Court is, accordingly, a court of local limited jurisdiction for the purpose of Article 34.3.4, it is necessary to consider the nature of that jurisdiction. One consequence of this constitutional provision is that the Circuit Court enjoys no inherent jurisdiction, as the limitations of the jurisdiction of the court must be as specified by law. This is in contrast to the position with regard to the High Court which, by virtue of Article 34.3.1 of the Constitution, enjoys a full original jurisdiction in respect of all justiciable matters.

12. The jurisdiction of the Circuit Court is principally set out by s. 22(1) of the Courts (Supplemental Provisions) Act 1961 (“the 1961 Act”)(as amended) which provides:

- "(a) Subject to paragraphs (b) and (c) of this subsection, the Circuit Court shall, concurrently with the High Court, have all the jurisdiction of the High Court to hear and determine any proceedings of the kind mentioned in Column (2) of the Third Schedule to this Act at any reference number.
- (b) Unless the necessary parties to the proceedings in a cause sign, either before or at any time during the hearing, the form of consent prescribed by rules of court, the Circuit Court shall not, by virtue of paragraph (a) of this subsection, have jurisdiction to hear and determine any cause of the kind mentioned in column (2) of the Third Schedule to this Act at a particular reference number in the case mentioned in column (3) of the said Schedule at that reference number.
- (c) The Circuit Court shall not, by virtue of paragraph (a) of this subsection, have jurisdiction to hear and determine any matter of the kind mentioned in column (2) of the Third Schedule to this Act at a particular reference

number in the case mentioned in column (3) of the said Schedule at that reference number...”

13. While the jurisdiction of the Circuit Court in relation to all matters relating to land has been based on the rateable valuation of that land since the very inception of the Circuit Court in June 1924, as both Murphy J. stated in *Finnegan* and Noonan J. observed in *Hanley*, a similar limitation had been imposed on the forerunners of the Circuit Court prior to Independence.

14. The Civil Bill Court was the immediate ascendant of the Circuit Court. It too was a statutory court, having been established by the Civil Bill Courts (Ireland) Act 1851 (“the 1851 Act”). This Court was part of an attempt in the aftermath of the Famine to decentralise the administration of justice. The first judges of the Civil Bill Court were not, indeed, judges as such, but rather barristers of ten years’ standing who held office on good behaviour. These barristers were later made judges of the newly named County Court: see s. 3 of the County Officers and Courts (Ireland) Act 1877. The earlier Act 1851 was then subsequently re-named as the County Court Act 1851: see s. 2(1) and Schedule to the Short Titles Act 1896. But for much of this period the Civil Bill Court was in effect the County Court when it came to exercising the jurisdiction which had been conferred by the 1851 Act, including the jurisdiction in relation to land.

15. As the continuity of jurisdiction as between the 1851 Act and the Courts of Justice Act 1924 is of some importance to this question, it may be useful to set this out. As this statutory lineage was traced by Noonan J. in his judgment in *Hanley* in a manner upon which I could not hope to improve, I have taken the liberty of freely adapting his most helpful analysis of this jurisdictional question.

16. Section 79 of the 1851 Act conferred jurisdiction on Civil Bill Courts in relation to ejectments. It provided that all disputes and differences respecting the possession of any lands tenements or hereditaments might be determined by a Civil Bill Court, subject to certain limitations with regard to the duration of the instrument under which the lands were held and the yearly rent reserved payable on foot of such instrument. That particular jurisdiction was then extended by s. 1 of the Civil Bill Courts (Ireland) Act 1874 to Civil Bill actions in which the title to any corporeal or incorporeal hereditament came into question when the value of the land in dispute did not exceed a certain figure by the year as valued “under the Acts relating to valuation of rateable property in Ireland.” It was at this point that the concept of rateable valuation of property as a device for fixing the maximum jurisdictional limits of the Civil Bill Court was first introduced.

17. The jurisdiction of the Civil Bill Court was further extended by s. 33 of the County Officers and Courts (Ireland) Act 1877 (“the 1877 Act”) which provided:

“The several Civil Bill Courts in Ireland shall, in addition to the jurisdiction now possessed by them, have and exercise all the power and authority of the High Court of Chancery in the suits and matters herein-after mentioned; that is to say,...

(c) In all suits for foreclosure sale or redemption of, or for enforcing any mortgage charge or lien upon, lands where the mortgage charge or lien shall not exceed in amount five hundred pounds, and the annual value of the lands to which the suit relates shall not exceed thirty pounds.”

18. Section 7 of the 1877 Act defined a Civil Bill Court in the following manner:

“The term ‘Civil Bill Court’ shall include any court for the transaction of civil business held before any chairman or recorder, and any land court, and any court of quarter sessions for the transaction of licensing business:”

19. The jurisdiction of the Civil Bill Courts was transferred to the former Circuit Court by s. 51 of the Courts of Justice Act 1924 (“the 1924 Act”):

“There shall be transferred to the Circuit Court all jurisdiction not hereinbefore expressly excepted which, at the commencement of this Act, was vested in or capable of being exercised by Recorders, County Court Judges, and Chairmen and Courts of Quarter Sessions, or any of the same in Saorstát Éireann (save such jurisdiction of Justices at or of Courts of Quarter Sessions as is hereinafter conferred on or transferred to the District Court) and the provisions of sections 21 and 22 of this Act shall apply, *mutatis mutandis*, to the jurisdiction vested in and transferred to the Circuit Court by this Act.”

20. The present Circuit Court was established by the Court (Establishment and Constitution) Act 1961. As part of this devolution of jurisdiction, s. 51 of the 1924 Act was repealed by the Courts (Supplemental Provisions) Act 1961 (“the 1961 Act”) which transferred the jurisdiction of the former Circuit Court to the present Circuit Court.

21. Section 22(5)(a) of the 1961 Act provided:

“There shall also be vested in the Circuit Court all jurisdiction which, by virtue of any enactment which is applied by section 48 of this Act, was, immediately before the operative date, vested in or capable of being exercised by the existing Circuit Court.”

22. Section 48(1)(a) of the 1961 Act then provides:

“Subject to paragraph (b) of this subsection, this section applies to the following enactments:

- (i) any enactment contained in the Courts of Justice Acts, 1924 to 1961, the Court Officers Acts, 1926 to 1961, or the Criminal Justice Act, 1951...”

23. It is thus clear that by virtue of this statutory chain of title the jurisdiction conferred by the 1877 Act - which remains in force - on the Civil Bill Courts (and as later subsumed into the County Court) continues to be enjoyed by the present Circuit Court. The Third Schedule to the 1961 Act contains the subheading: “Civil Proceedings In Respect Of Which The Jurisdiction Of The High Court Is, With Quantitative Limitations, Conferred On The Circuit Court, And Judges Of The Circuit Court By Whom The Jurisdiction Is To Be Exercised”

24. The Schedule then sets out in tabular form four separate columns numbered (1) to (4) respectively. Column number (1) contains the reference number of the particular category of civil action concerned of which there are 29. Column number (2) is entitled “Civil proceedings in respect of which jurisdiction is conferred on the Circuit Court” and describes in each instance the category of proceedings concerned. The relevant category in this instance would appear to be number 28 which is:

“Proceedings in relation to property not hereinbefore specified in this Schedule and which immediately before the commencement of Part I of the Courts of Justice Act, 1924 (No. 10 of 1924), were assigned to the Chancery Division of the former High Court of Justice in Southern Ireland, other than proceedings in relation to companies.”

25. Column number (3) is entitled “Exclusion of jurisdiction (except by consent of necessary parties) in certain cases” and the entry in column (3) insofar as it relates to category 28 provides:

“Where the property:

- (a) in so far as it consists of personalty, exceeds in amount or value £2,000, or
- (b) in so far as it consists of land, exceeds the rateable valuation of £60.”

26. Column number (4) deals with venue and is entitled “Judge of Circuit Court by whom jurisdiction is to be exercised”. The rateable valuation of £60 mentioned in column (3) was subsequently increased by the Courts Act 1971 to £100 and then to £200 by the Courts Act 1981, s. 2(1)(d). The Euro equivalent of £200 is €253.95.

27. All of this means that the current jurisdiction of the Circuit Court to deal with matters relating to land is confined to those cases where the rateable valuation of the property concerned does not exceed €253.95.

The Valuation Act 2001

28. It is next necessary to consider the issue of the valuation of land. While the system of the payment of rates dates back to at least the Poor Relief (Ireland) Act 1838, it was not until the publication of the Griffiths Valuation in the period from 1853 to 1865 that the system of land valuation for every part of the island of Ireland was ultimately realised. Provision for such a valuation of an individual landholding was first contained in s. 10 of the Valuation (Ireland) Act 1852.

29. The system of rates was continued after Independence, but it proved to be politically contentious. Rates on domestic dwellings were accordingly abolished with the enactment of the Local Government (Financial Provisions) Act 1978 (“the 1978 Act”). The legislative drafting technique whereby this was achieved is some interest and not without relevance to this case because domestic rates were not abolished for all purposes by the 1978 Act. Section 3 of the 1978 Act rather required each local authority “to make an allowance to the [domestic ratepayer] and, accordingly, the rate so made shall be abated.”

30. It was in this manner that domestic rates were kept in being in some conceptual sense, although no domestic rates were actually paid after the 1978 Act. The reason for this indirect approach was, presumably, because of the use of the system of rateable valuation in other areas of the law. Thus, quite apart from the jurisdiction of the Circuit Court, the rateable value of a hereditament is, for example, significant in determining whether a lease owner can buy out his freehold under s. 10(5) of the Landlord and Tenant (Amendment) Act 1978 (as amended).

31. If this system had been maintained, it would, presumably, have been relatively easy for the system of rateable valuation to continue to determine the jurisdiction of the Circuit Court, the abolition of domestic rates notwithstanding. The difficulty which is presented so far as the present case is concerned, however, is that further changes were effected by the 2001 Act. Specifically, the effect of s. 15 of the 2001 Act is that it provides expressly that, subject to minor exceptions not here relevant, domestic dwellings “shall not be rateable.”

32. Part of the change effected by the 2001 Act is that certain categories of “relevant property” are accordingly not rateable. The definition of “relevant property” for the purpose of the 2001 Act is set out in Schedule 3. This definition includes at para. 1(a) of the Schedule “buildings”, and, accordingly, buildings of every description are “relevant property” for the purposes of the 2001 Act. It is necessary, however, next to consider s. 15 of the 2001 Act which provides :

"(1) Subject to the following subsections and sections 16 and 59, relevant property shall be rateable.

(2) Subject to sections 16 and 59, relevant property referred to in Schedule 4 *shall not* be rateable.” (emphasis supplied)

33. Schedule 4 of the 2001 Act then itemises nineteen categories of “relevant property” which are not rateable. Item 6 is “any domestic premises”. This is, however, subject to s. 59(4) of the 2001 Act which provides that apartments are rateable in certain limited circumstances. As this present case concerns domestic dwellings, this exception is of no relevance to the present appeal. The term “domestic premises” is defined in s. 3 of the 2001 Act as “any property which consists wholly or partly of premises used as a dwelling and which is neither a mixed premises nor an apart-hotel”. (The term “mixed premises” is defined by s. 3(1) of the 2001 Act is defined as meaning a property which consists wholly or partly of a building which is used partly as a dwelling to a significant extent and partly for another or other purposes to such an extent.)

34. The properties which are the subject of these proceedings are dwellings which are neither mixed premises (in the sense of s. 3(1) of the 2001 Act) nor are they apart-hotels. They are, accordingly, no longer rateable by virtue of the provisions of these provisions of the 2001 Act.

The judgments in *Finnegan* and *Hanley*

35. In essence, the difference between the two judgments in *Finnegan* and *Hanley* can be shortly stated. While in *Finnegan* Murphy J. acknowledged that it was not necessary formally to “prove rateable valuation in order to establish jurisdiction, the absence of rateable valuation does deprive the court of jurisdiction.” By contrast, in *Hanley* Noonan J. took the view that the effect of s. 22(1) of the 1961 Act was to vest the Circuit Court with the same original jurisdiction as the High Court:

“....in relation to proceedings in the categories identified in column (2) of the Third Schedule subject only to that jurisdiction being divested were the jurisdictional limits identified in column (3) are exceeded. It follows in my

view that unless and until it has been demonstrated that the jurisdictional limit has been exceeded, the Circuit Court enjoys jurisdiction.”

36. Forced as I am to choose between two powerfully argued High Court judgments, I find myself on balance agreeing with Murphy J. in *Finnegan*. It seems to me that it is necessarily implicit in the scheme of jurisdictional limits prescribed by the s. 22(1) and the Third Schedule of the 1961 Act that the property in question must have a rateable valuation. If, whether by virtue of the 2001 Act or otherwise, the property is not rateable, then the Circuit Court simply has no jurisdiction to hear the proceedings, since the entire premise of the Third Schedule to the 1961 Act is that the Circuit Court has jurisdiction where:-

- (i) the property in question is rateable and
- (ii) that rateable valuation is less than €252.

37. One might equally say that the Circuit Court has been given no jurisdiction in respect of unrateable property. If the Oireachtas had ever intended that the Circuit Court should enjoy a jurisdiction in respect of unrateable property, then the limits of that jurisdiction would have to be specified by law in the manner envisaged by Article 34.3.4. But since there are no such limits specified by law, this in itself is a further indicator that the Circuit Court has no such jurisdiction in such cases, as any other conclusion would suggest that the Oireachtas impliedly sought to confer an unlimited jurisdiction on the Circuit Court in respect of unrateable property in a manner contrary to the terms of Article 34.3.4 itself.

38. In this regard it might be observed that in *Grimes v. Owners of the SS Bangor Bay* [1948] I.R. 350 the Supreme Court rejected for this very reason a construction of the Courts of Justice Acts 1924 (“the 1924 Act”) which would have conferred an unlimited jurisdiction on the Circuit Court in admiralty matters. In particular, in his

judgment for the majority of the Court, O'Byrne J. rejected the argument ([1948] I.R. 350, 357) that the relevant section of the 1924 Act could be interpreted as "conferring on the Circuit Court general jurisdiction in all civil cases not expressly excluded subject only to the limitations...imposed by that section."

39. In arriving at this conclusion I have not overlooked the arguments forcefully pressed upon the Court by Mr. Kieran, counsel for PTSB, to the effect that this interpretation of the s. 22(1) of the 1961 Act would lead to an absurd result which could never have been intended by the Oireachtas. There is no doubt but that the conclusion which I find myself obliged to reach cannot be regarded as a satisfactory one. The difficulty in the present case stems directly, however, from the clear and unambiguous language of the Oireachtas in enacting the 2001 Act when it declared that domestic dwellings were not rateable. This is a matter which is simply beyond the capacity of this Court to cure or amend.

40. In any event, as Murphy J. pointed out in *Finnegan*, the Oireachtas has to some extent already anticipated the difficulties potentially caused by the enactment of the 2001 Act. Section 45 of the Civil Liability and Courts Act 2004 already provides for a system of jurisdiction for the Circuit Court based on the market value of the property concerned. Section 45 provides:

"(1) Section 2 of the Courts (Supplemental Provisions) Act 1961 is amended by the insertion, in subsection(1), of the following definition: 'market value' means in relation to land, the price that would have been obtained in respect of the unencumbered fee simple were the land to have been sold on the open market, in the year immediately preceding the bringing of the proceedings concerned, in such manner and subject to such

conditions as might reasonably be calculated to have resulted in the vendor obtaining the best price for the land.

(2) The Third Schedule to the Courts (Supplemental Provisions) Act 1961 is amended in Column (3), by the substitution of:

(a) “market value” for “rateable valuation” in each place that it occurs,
and

(b) “€3,000,000” for “£200” (inserted by section 2(1)(d) of the Act of 1981)

in each place that it occurs.”

41. While this particular section has never been commenced in the manner required by s. 2(1) of the 2004 Act (so that it is not in force), it is evident that the Oireachtas considered that at some point in the future it might be necessary to move away from the rateable valuation system as the fulcrum of the Circuit Court’s jurisdiction in disputes in relation to land.

42. Further change was effected by Part 10 of the Land and Conveyancing Law Reform Act 2009 (“the 2009 Act”). Part 10 of the 2009 Act conferred a new jurisdiction on the Circuit Court in mortgage suits which was not dependent on rateable valuation. Section 101(5) of the 2009 Act provides:

“Where an application under section 97(2) or section 100(3) concerns property which is subject to a housing loan mortgage the Circuit Court shall have exclusive jurisdiction to deal with the application and the application shall not be made to the High Court.”

43. Although this provision came into effect on the 1st December, 2009, this measure as enacted only confers jurisdiction on the Circuit Court in respect of mortgages for housing loans created *after that date*. As the defendant’s mortgages

were created in 2008, the changes effected by the 2009 Act had no application to the present case.

44. In 2013 the Oireachtas enacted s. 3 of the Land and Conveyancing Law Reform Act 2013 (“the 2013 Act”) which extended the jurisdiction of the Circuit Court to mortgages in respect of principal private residences created *before* 1st December 2009. Indeed, s. 3(2) of the 2013 Act provides that possession proceedings commenced by a mortgagee in respect of such premises must be brought in the Circuit Court. This provision is in force with effect from 31st July 2013: see Land and Conveyancing Act 2013 (Commencement) Order 2013 (S.I. No. 289 of 2013).

45. The 2013 Act represents another contemporary example of where the Oireachtas has moved away from the traditional rateable valuation model in vesting jurisdiction in the Circuit Court in relation to disputes concerning land. As, however, the properties at issue in the present proceedings did not concern the principal private residence of the defendant, the 2013 Act is not of any direct relevance so far as the resolution of the jurisdictional questions at issue in the present case is concerned.

Conclusions

46. I would sum up the jurisdictional dispute arising in the present case by saying that, in the case of possession proceedings concerning property, the entire premise of the jurisdiction of the Circuit Court as vested by s. 22(1) of the 1961 Act and the Third Schedule (as amended) is that the property in question must be rateable. Although the effect, however, of the 2001 Act was to make dwellings no longer rateable, this also had the consequence that the Circuit Court had no jurisdiction to hear disputes in relation to such property.

47. This was ameliorated by the enactment of the 2013 Act which conferred such a jurisdiction in respect of possession suits affecting *principal private residences* where

the mortgage was created *before* 1st December 2009. The Circuit Court was also given such jurisdiction in respect of *all property* by Part 10 of the 2009 Act where the mortgage was created *after* 1st December 2009.

48. In these circumstances it is sufficient to say that the Circuit Court had no jurisdiction to hear the present proceedings because the properties in question are domestic dwellings which are not rateable. Although since the enactment of Part 10 of the 2009 Act the Circuit Court now enjoys a general jurisdiction in respect of such dwellings which is not dependent on rateable valuation, this only applies where the mortgage in question was created after 1st December 2009. The Circuit Court also enjoys a similar general jurisdiction by virtue of the 2013 Act in respect of principal private dwellings. Neither of these exceptions apply, however, to the present case. The mortgages over the properties were all created prior to 1st December 2009 and the properties in question are not the principal private residence of the defendant.

49. There is no doubt but that these conclusions are likely to lead to consequences which are both unfortunate and unintended. It will mean that, henceforth, possession proceedings not otherwise falling within the exceptions created by the 2009 Act and the 2013 Act will have to be commenced in the High Court rather than the Circuit Court. This will simply create additional costs for litigants and will serve to deprive the parties of access to local courts in the manner in which the Constitution actually intended. This judgment has even the more serious consequence that the general jurisdiction of the Circuit Court to deal with property disputes (*i.e.*, other than those concerning applications for possession) concerning domestic dwellings is, at least, now open to question.

50. This Court is nonetheless obliged faithfully to administer the law as enacted by the Oireachtas in the manner required by our judicial declaration of office as provided

for in Article 34.6.1 of the Constitution. While s. 5(1)(b) of the Interpretation Act 2005 permits the court to avoid, where possible, an interpretation of legislation that “on a literal interpretation would be absurd or would fail to reflect the plain intention of the Oireachtas”, the express language and structure of the 2001 Act read in conjunction with the basic statutory assumptions as to the jurisdiction of the Circuit Court contained in s. 22(1) and the Third Schedule of the 1961 Act simply make this impossible in the present case.

51. In answer, therefore, to the questions posed by Baker J. in her case-stated, I would propose that they be answered as follows:

Q.1. Yes, subject to the answer given in respect of Q.3.

Q.2. No.

Q.3. Where the defendant has put the jurisdiction of the Circuit Court at issue, that Court is not entitled to proceed to judgment in respect of a domestic dwelling which has been rendered unrateable by the Valuation Act 2001, unless the case in question comes within either Part 10 of the 2009 Act or s. 3 of the 2013 Act.

Q.4. Does not arise.

Q.5. Does not arise.

Approved
General Hogan
28th July 2016