

Case Note: RGRE Grafton Limited v Bewley's Café Grafton Street Limited & Bewley's Limited [2026] IESC 10

Louise Wright*

Introduction

This case was an appeal by the defendants against the decision of the Court of Appeal (Costello J, Pilkington J concurring; Whelan J dissenting).¹ Costello J, delivering the majority decision of the Court of Appeal, found in favour of the plaintiff (the Landlord), upholding McDonald J's finding in the High Court in respect of the Four Orders windows, namely that they were 'part and parcel' of Bewley's Café (the Café) on Grafton Street.² However, Costello J reversed the finding that the Swan Yard windows (which were said to form part of a double fenestration arrangement) were the defendants' tenant's fixtures. Instead, she held that they also formed 'part and parcel of the premises' and were the property of the Landlord.³

Bewley's Café Grafton Street Limited (the Tenant)⁴ had been in continuous occupation of the Café since 1927 pursuant to a lease granted in 1928 for a term of twenty-one years (the 1928 Lease). A new lease was granted for a further term of one hundred years in 1949, which was subsequently replaced (following a sale and leaseback) by another lease granted in 1987 for a term of 35 years (the 1987 Lease).⁵

In December 2020, the Tenant entered into an agreement with Bewley's Limited (its parent company) (collectively the Respondents) for the transfer of ownership of the Four Orders and Swan Yard windows (the Windows) to the parent company. The parent

* Louise Wright, Partner, Group Leader of the Real Estate Team, Certified Mediator and Arbitrator (FCIArb) Moran & Ryan LLP. Any opinions expressed are personal to the writer.

¹ *RGRE Grafton Limited v Bewley's Café Grafton Street Limited & Anor* [2024] IECA 199.

² [2024] IECA 199 [140].

³ *ibid* [141].

⁴ Following a change of ownership in 1987, it was previously known as Bewley's Oriental Cafés Limited.

⁵ See [2023] IEHC 25 [80]-[100].

company then licensed the Windows back to the Tenant, permitting their continued use in the Café. The Landlord challenged the validity of the transfer, instigating the High Court proceedings against the Respondents on the basis that it was the owner of the Windows.⁶

The Respondents were granted leave to appeal to the Supreme Court on the basis that the intended appeal raised significant and complex issues of law relating to fixtures.⁷ As succinctly described by one commentator:

this apparently simple distinction between fixture and chattel has, nonetheless, given rise to hundreds of years of confused and, at times, unhelpful case law, has vexed some of the greatest legal minds and, consequently, has failed to result in a clear or coherent legal ‘test’.⁸

The Respondents submitted that the Court of Appeal’s conclusion was incorrect and invited the Supreme Court to adopt the reasoning in Whelan J’s dissenting judgment, in which she found that the Windows were tenant’s fixtures because they were readily removable and were essentially decorative and ornamental.

History

Bewley Heritage

The legacy of the Bewley family, renowned for coffee and tea, is notable. Mr Joshua Bewley founded the Bewley enterprise, initially operating from premises comprising three houses on Sycamore Street, off Dame Street, beside the Olympia Theatre, where he sold tea, sugar, and small amounts of coffee. His son, Charles, was involved in the business in its early days before emigrating to New Zealand. Mr Ernest Bewley (Mr Bewley) later joined the business after leaving school in 1876. Mr Bewley developed the Bewley’s brand by acquiring 19/20 Fleet Street in 1900, which he converted into a café, and then acquired 12 Westmoreland Street in 1916, converting the front into a

⁶ *ibid* [1]-[3].

⁷ See [2025] IESCDet 15.

⁸ Chris Bevan, ‘The law of fixtures and chattels: recalibration, rationalisation and reform’ (2022) 42(2) *Legal Studies* 358, 358. This passage is also quoted in footnote 6 of *RGRE Grafton Limited* [2026] IESC 10.

shop and the back into a café. However, his trophy acquisition was the premises on 78-79 Grafton Street which he acquired in 1926. There, he commissioned the construction of the flagship Café, which was opened for business on 27 November 1927.⁹ The Café is an architectural masterpiece which was designed by Millar & Symes Architects. The design was bespoke, with a distinct Art Deco style, featuring an iconic and rare Egyptian Revival-inspired mosaic façade and incorporating stained glass windows, six of which were designed and made by the renowned stained-glass artist and illustrator, Harry Clarke.

The windows

The Windows were commissioned by Mr Bewley in 1927 as part of the construction of the Café from Joshua Clarke & Sons (the firm of Harry Clarke's father) and were the responsibility of Harry Clarke. In 1927, the openings for the Windows were installed with clear glass and were then replaced with the Windows in March/April 1928. The Four Orders windows (cost £280.00), represent four of the orders of classical architecture. The Swan Yard windows (cost £180.00) derived their name from the fact that they were originally set into the window openings overlooking Swan Yard at the rear of the Café. The sashes in each of the Windows could open inwards and were designed with a 'hopper mechanism' to enable the sashes to open in tandem in order to ventilate the Café. The Windows were removed for safekeeping during World War II and were also removed to facilitate refurbishment works in 1998. The location and arrangement of the Swan Yard windows were the subject of significant dispute. The window opening for one of the said windows was blocked up between 1928 and 1986 with one of the Swan Yard windows placed behind the blocked opening. The remaining opening contained clear glass inside of which the remaining Swan Yard window was placed. The Swan Yard windows were relocated to a new internal wall within the Café in 1986, following the installation of a fire escape staircase in the Café.¹⁰

The judgment

The Supreme Court began by setting out as the starting point 'the general well known rule that whatever is fixed to the freehold of land becomes part of the freehold or

⁹ Fiona Murdoch, *Victor Bewley's Memoirs* (2nd edn, Veritas Publications 2021) 53-55.

¹⁰ [2023] IEHC 25 [4]-[11], [24].

inheritance'.¹¹ This rule is frequently expressed by referring to the Latin maxim *quicquid plantatur solo, solo cedit* and was outlined by Lord Cairns LC in *Bain v Brand*.¹²

The law traditionally provided a twofold classification between chattels and fixtures. The threefold classification recorded in Woodfall, *Landlord and Tenant* ((i) a chattel, (ii) a fixture, or (iii) part and parcel of the land (with categories (ii) and (iii) treated as forming part of the land)) was adopted by the House of Lords in *Elitestone Ltd v Morris*.¹³ The reformulated classification was adopted by the parties in this case.

Collins J highlighted that it is a question of fact whether a chattel is attached to the land or premises, turning on two issues: (i) the mode of annexation and (ii) the purpose of annexation.¹⁴ The purpose test is assessed objectively: *Ardfert Quarry Products v Moormac Developments Limited (In Receivership)*.¹⁵ As outlined by Collins J, although there is a substantial body of case law in relation to these tests, it can be difficult to determine what amounts to annexation in any given case.¹⁶ Collins J referred to *Holland v Hodgson*, where Blackburn J set out the 'true rule' in relation to (i) the degree of annexation (an item attached to the land, even slightly, is presumed to be a fixture, while items resting by their own weight are generally treated as chattels) and (ii) the purpose of annexation (if an item is affixed to better enjoy the land or building, it is a fixture; if it is attached for a temporary purpose or for the better use of the item itself, it remains a chattel).¹⁷ The 'true rule' places a strong emphasis on where the burden of proof lies. The onus of proof was a key factor in the resolution of this appeal, as discussed later.¹⁸

Returning to Lord Cairns' judgment in *Bain v Brand*, Collins J recognised the common law exception for items annexed to the property for trade purposes: they may be

¹¹ *RGRE Grafton Limited* (n 1) [30] (Collins J, citing *Bain v Brand* (1876) 1 App Cas 762, 767).

¹² (1876) 1 App Cas 762.

¹³ [1997] 1 WLR 687, 691 (Lord Berwick, citing Lewison et al, *Woodfall: Landlord and Tenant* (Vol 1, Sweet and Maxwell, 1994) [13.131]).

¹⁴ *RGRE Grafton Limited* (n 1) [36].

¹⁵ *ibid* [36] *Ardfert Quarry Products v Moormac Developments Limited (In Receivership)* [2013] IEHC 572 [24].

¹⁶ *ibid* [37].

¹⁷ *Holland v Hodgson* (1872) LR 7 CP 328, 335-336.

¹⁸ *RGRE Grafton Limited* (n 1) [38].

severed and removed by a tenant during the tenancy.¹⁹ As outlined in Halsbury and as stated by Collins J: '[the] right of removal is subject to the article or item being capable of being severed without causing irreparable damage to the demised premises'.²⁰

Collins J referred to the statutory reformulation of the common law exception set out in section 17 of the Landlord and Tenant Law Amendment Act, Ireland 1860 (Deasy's Act)²¹ which confers a statutory right to remove tenant fixtures where the requirements of the section are satisfied. One of the fundamental preconditions is evidence that the tenant was solely responsible, at its own expense for constructing and affixing the item to the premises. This featured 'as a threshold issue' in submissions made on behalf of the Tenant and is discussed later.²²

A review of the authorities on windows and tenants' fixtures

Numerous window cases were opened to the Court²³ including: (i) *R v Hedges*²⁴ (the court concluded that the windows were not fixed into the freehold because the sashes were not fixed into the window frames); (ii) *Burt v Haslett*²⁵ (the court held that the plate-glass window installed by the tenant, which replaced the old shop window, belonged to the premises and was to be yielded up to the landlord); (iii) *Easton v Isted*²⁶ (opening a window is not an essential function of a window – nor is ventilation); (iv) *Climie v Wood*²⁷ (although the matter involved an engine and boiler, Willes J highlighted a distinction between chattels that retained their character as chattels after annexation (for example, a picture on a wall) and those that, once annexed, became an essential part of the land (for example 'doors or chattels')); (v) *Boswell v Crucible Steel Company*²⁸ (although the case related to the scope of a repairing covenant in a commercial lease the Court of Appeal held that the landlord's fixtures did not include windows that formed part of the structure of the premises); and (vi) *Holiday Fellowship*

¹⁹ *ibid* [39].

²⁰ *ibid* [40].

²¹ *ibid* [41].

²² *ibid* [42].

²³ *ibid* [45]-[51].

²⁴ (1779) 1 Leach 201.

²⁵ (1856) 18 C B 162.

²⁶ [1903] 1 Ch 405.

²⁷ (1868-69) LR 4 Exch 328.

²⁸ [1925] 1 KB 119.

*Ltd v Hereford*²⁹ (this case concerned the meaning of a repairing covenant in a lease and whether the 'main walls', which the tenant was excluded from repairing, included the windows; the High Court held in favour of the landlord, ie that the windows were not part of the 'main walls', and thus the tenant was obliged to repair them).

Collins J found that the cases most helpful in resolving the appeal were *Boswell v Crucible Steel* and *Climie v Wood*, which McDonald J had also relied upon as significant authorities in his High Court decision when determining that the Four Orders windows were part and parcel of the Café and not fixtures. These authorities were also considered important by Costello J in the Court of Appeal.³⁰

Several trade fixtures cases were also referred to³¹ including (i) *Climie v Wood*; (ii) *Re Ross and Boal Limited*³² (the Court of Appeal affirmed the High Court's decision that the sewing machines had not passed as fixtures to the bank and were available to the liquidator); (iii) *Lombard and Ulster Banking Limited v Kennedy*³³ (Gibson J concluded that the automatic car wash machine was a 'tenant's trade fixture' and was removable by the tenant); and (iv) *In re Galway Concrete Ltd* (in liquidation)³⁴ (the plant and machinery installed on the land for the purposes of cement production was in the nature of a tenant's fixture). Collins J noted that *In re Galway Concrete Ltd* was of limited relevance, as there appeared to have been no dispute between the landowner and the company regarding the removal of the plant and machinery.³⁵

A number of ornament cases were drawn to the Court's attention reflecting the emphasis the Tenant placed on the ornamental/artistic character of the Windows, including: (i) *In re De Falbe*³⁶ (seven tapestries of high value were acquired by the tenant and fixed to the walls of the drawing room; upon the tenant's death, the remainderman claimed that the tapestries were attached to the freehold; the Court of Appeal reversed the decision of the High Court and held that the tapestries formed

²⁹ [1959] 1 WLR 211.

³⁰ *ibid* [50], [53].

³¹ *RGRE Grafton Limited* (n 1) [54]-[58].

³² [1924] 1 IR 129

³³ [1974] NI 20.

³⁴ [1983] ILRM 402.

³⁵ *RGRE Grafton Limited* (n 1) [58].

³⁶ [1901] 1 Ch 523.

part of her personal estate; the remainderman's appeal to the House of Lords was unsuccessful; the tapestries were purely ornamental); and (ii) *Spyer v Phillipson*³⁷ (the tenant without the landlord's consent, installed valuable antique panelling that was readily removable without causing significant damage to the area demised; the function was entirely ornamental; the Court of Appeal concluded that the items could be removed subject to the executor making good any consequential damage to the premises).³⁸

Collins J held that these ornament cases did not assist the Tenant's case, given that the Tenant did not assert that the Windows were purely ornamental; instead, it characterised them as trade fixtures that also served an ornamental purpose.³⁹ In addition, there was certainty as to payment for the items in those cases, which was not the position here.⁴⁰

*Elliot v Bishop*⁴¹ was cited by the Tenant as authority for the proposition that functional items which also serve an ornamental function can be removed by the Tenant. As a matter of principle, this was not disputed by the Landlord. Collins J noted that over time in the case law, there has been an observable trend towards relaxing the full purview of *quicquid plantatur solo, solo cedit* with increasing emphasis on the purpose, rather than the mode of annexation.⁴²

In the cases referred to above, Collins J pointed out that there was a clear distinction between the landlords and tenants, which is not the position in this case. Mr Bewley occupied a dual role: he not only owned the Café but was also the chairman, director and shareholder of Bewley's Oriental Cafés Limited (as the Tenant was then called).⁴³ This significantly contributed to the complexities and uncertainties surrounding the resolution of the issues.⁴⁴ In addition, it was self-evident that the Windows 'were commissioned and designed, if not installed, before a lease was ever granted and were

³⁷ [1931] 2 Ch 183.

³⁸ *RGRE Grafton Limited* (n 1) [61]-[64].

³⁹ *ibid* [65], [110].

⁴⁰ *ibid* [67].

⁴¹ (1854) 10 Ex 496.

⁴² *RGRE Grafton Limited* (n 1) [66].

⁴³ *ibid* [70].

⁴⁴ *ibid* [2].

(or so at least the Landlord says) always intended to be a part of the demised premises.’⁴⁵ This, Collins J noted, was a further point of distinction between the present case and the cases referred to above.

Supreme Court Decision

The Supreme Court held that McDonald J in the High Court correctly found that the Four Orders windows were ‘part and parcel’ of the Café. However, the Court held that McDonald J was incorrect to conclude that the Swan Yard windows were the Tenant’s fixtures and were removable pursuant to section 17 of Deasy’s Act. Instead, the Court held that the Swan Yard windows were equally ‘part and parcel’ of the Café and, accordingly, the property of the Landlord. The Supreme Court thus affirmed the Order made by the Court of Appeal. The Supreme Court considered several factors in arriving at its decision. These are addressed in the paragraphs below.

Lack of evidence

The significant challenge for the High Court, the Court of Appeal and the Supreme Court in reaching their decisions arose from a lack of evidence and the scarcity of information, which was fragmented and uncertain. No witness could give first hand evidence of what occurred between 1927-1928 and 1928-1986, with the exception of Mr Ebbs (a witness for the Tenant who was contracted by it for the ongoing maintenance of the stained glass from 1972 -1988). In addition, the correspondence from the Architects’ (Messrs Millar & Symes and McDonnell & Dixon) to Joshua Clarke & Sons was lost. Central to the case, was the weight placed on the board minute of a meeting of the Tenant (which was held to agree the rent payable under the 1928 Lease) on 9 March 1928 (Board Minute). The Board Minute was fragmented: the recorded minute of a meeting held on 30 June 1927 was not available, nor did the recorded letter from Mr Bewley to his fellow directors (which was read at the meeting and referred to ‘expenditure on 78-79 Grafton Street, Dublin’)⁴⁶ survive. The Board Minute is examined in further detail later.

⁴⁵ *ibid* [69].

⁴⁶ *ibid* [12]-[13].

Difficulties with the findings of fact

The High Court, the Court of Appeal and the Supreme Court acknowledged that the absence of evidence created difficulties in making findings of fact.⁴⁷ Collins J noted that this led to the High Court reaching conclusions that 'were largely a matter of inference'.⁴⁸ In deciding the case in the absence of the required evidence, Collins J placed particular emphasis on which party bore the burden of proof. Furthermore, in considering whether that party had discharged its burden, the court had to consider whether the available evidence was adequate to permit any reliable finding.

Collins J relied on an analysis by George Leggatt (Lord Leggatt)⁴⁹ who expressed the view that it is fair for the party seeking the court's determination to bear the responsibility of ensuring that there is sufficient evidence of adequate quality. He also maintained that '[d]ischarging the burden of proof requires evidence of sufficient adequacy to enable a reliable assessment of probability'.⁵⁰ In support of that analysis, Collins J referred to the decision of the House of Lords in *Rhesa Shipping Co SA v Edmunds (The Popi M)*,⁵¹ a marine insurance case concerning a vessel's sudden loss at sea, which confirms that a claimant must prove causation on the balance of probabilities. Lord Brandon in that case rejected the 'Sherlock Holmes' approach of accepting the remaining theory (even though improbable) once other impossible theories have been eliminated. He confirmed that where competing theories are inherently improbable or unsupported by evidence, a court is not obliged to select the least improbable. In such circumstances, the proper (and sometimes only) course is to conclude that the claimant has failed to discharge the burden of proof. Furthermore, an assessment of whether a case has been proved on the balance of probabilities must be grounded in common sense.⁵² Lord Brandon's approach was also cited with approval in *Quinn v Mid-Western Health Board*⁵³ and *James Elliot Construction Ltd v*

⁴⁷ [2026] IESC 10 [88]; [2024] IECA 199 [7] (Costello J); [2023] IEHC 25 [27], [37].

⁴⁸ *RGRE Grafton Limited* (n 1) [72].

⁴⁹ George Leggatt, 'Black marbles, Blue Buses and Yellow Submarines: an Essay on the Civil Standard and Burden of Proof' (2024) 140 *Law Quarterly Review* 570-594 at 592.

⁵⁰ *RGRE Grafton Limited* (n 1) [83].

⁵¹ [1985] 1 WLR 948.

⁵² *ibid* 955-956.

⁵³ [2005] IESC 19, [2005] 4 IR 1.

*Irish Asphalt Ltd.*⁵⁴ Collins J held that the burden of proof doctrine as set out in *The Popi M* was not limited to cases of causation.

Issues to be considered by the Supreme Court

Who paid for the windows?

There was uncertainty as to who paid for the Windows and on what basis. This was a significant issue in determining whether the Swan Yard windows were the Tenant's fixtures. A failure by the Tenant to demonstrate that it had paid for those windows would prevent it from satisfying section 17 of Deasy's Act, thereby rendering the Swan Yard windows the Landlord's property. The Tenant relied on the Board Minute as evidence that it had discharged the payment. McDonald J stated that it was 'unsafe' to rely on the Board Minute (acknowledging that it did not refer to the Windows) unless other circumstances supported that inference.⁵⁵ McDonald J nevertheless found that the Swan Yard windows were the Tenant's fixtures, and, as the said minute recorded payments for 'café fixtures and fittings' on behalf of the Tenant, he accepted on the balance of probabilities that the Board Minute could be relied upon as evidence of payment.⁵⁶

However, Collins J stated that the key issue was whether the Board Minute was capable of constituting a sufficient basis for a finding on the balance of probabilities.⁵⁷ Applying the burden of proof doctrine outlined by Lord Leggatt and adopted by Lord Brandon in *The Popi M*, Collins J found that the Tenant had failed to discharge its burden of proof on its submission that the Board Minute evidenced payment for the Windows. The said minute did not refer to the Windows. Although it referred to costs for the account of Mr Bewley, it was not intended to be comprehensive. Moreover, the items recorded as being for the account of the Tenant referred to trade fixtures only. Collins J. stated that 'it was entirely speculative to attribute the source of the payment

⁵⁴ [2011] IEHC 269.

⁵⁵ [2023] IEHC 25 [79].

⁵⁶ *ibid* [189]-[193].

⁵⁷ *RGRE Grafton Limited* (n 1) [94].

to the Tenant and then infer from that that the payment was made on the Tenant's behalf.'⁵⁸

Ownership of the Swan Yard windows

In addressing this issue, Collins J referred to McDonald J's approach in which he placed the burden of proof on the Landlord, stating:

That the burden of proof was on the Landlord was crucial to the Judge's conclusion on this point: if the burden had been on the Tenant, the evidence might not have been sufficient to prove that the *Swan Yard* windows never formed part of the external skin of the Café building.⁵⁹

Collins J referred to the 'true rule' articulated by Blackburn J in *Holland v Hodgson*: once it was shown that the Swan Yard windows were 'affixed to the land even slightly',⁶⁰ the onus was on the Tenant to establish that the said windows were not intended to function as windows but were merely 'mock windows', as outlined by McDonald J.⁶¹ There were also inconsistencies in the evidence of the Tenant's witnesses as to what was in, and/or outside, the window openings (particularly the remaining Swan Yard opening) in 1986/1987. Notwithstanding McDonald J's criticism of the approach taken by Mr O'Connell (the Tenant's Architect) in relation to his evidence regarding the Four Orders windows, McDonald J appeared to prefer his evidence to that of Mr. Slattery (the Landlord's Architect).

There was no direct evidence as to how the Swan Yard windows (which formed part of the same commission as the Four Orders windows, and which were designed with a requirement for ventilation) were installed in 1928. Collins J found that McDonald J's suggestion that ventilation was unnecessary because it was outweighed by the need for security and the hoisting of flour bags to the first floor (which may have caused damage to the Swan Yard windows) was speculative and without any evidential basis. He noted that McDonald J asked the wrong question by 'asking whether there were possible reasons for the different treatment of the *Four Orders* and *Swan Yard*

⁵⁸ *ibid* [98].

⁵⁹ *ibid* [15].

⁶⁰ *ibid* [102].

⁶¹ [2023] IEHC 25 [186]-[187].

windows' and was thereby drawn into speculation, while failing to place the required weight on the need for ventilation.⁶² Collins J held that the theorisation of a double fenestration arrangement was 'highly implausible', lacked any rationale, and offered no reason why the design would have differed from the Four Orders windows.⁶³ He stated that '[a]ny such inference flies in the face of both the available evidence and common sense'.⁶⁴ He found that the Windows were commissioned and designed as windows and fulfilled the functions of windows.

The required weight was not given by McDonald J to the evidence provided by Dr Caron (who had never come across a double fenestration arrangement) or Ms Lucy Costigan (who confirmed that there was no evidence in the Harry Clarke archives of a double fenestration arrangement), both of whom gave evidence on behalf of the Landlord.⁶⁵

As noted above, the circumstances in this case differ from the ornament cases, *In re De Galbe and Spyer v Phillipson*, in which the objects in dispute were purely ornamental and there was certainty as to payment. Furthermore, the evidence did not permit any inference that the Swan Yard windows 'were intended solely for the benefit of the café business.'⁶⁶

Ownership of the Four Orders windows

Collins J upheld the finding in the High Court and the Court of Appeal that the Four Order windows formed part and parcel of the Café from their installation, admitting light, providing ventilation, and weathering the Café. Physical evidence from a 1998 video (taken when those windows were removed during works) showed that they were flush against the bullnose brick façade, with no space to accommodate the theorised double fenestration arrangement. As noted above, the High Court and the Court of Appeal placed particular emphasis on *Climie v Wood* and *Boswell v Crucible Steel*. Mr Ebbs submitted, on behalf of the Tenant, that there was no evidence of weathering on the windows. This was rejected.

⁶² *RGRE Grafton Limited* (n 1) [20].

⁶³ *ibid* [104].

⁶⁴ *ibid* [107].

⁶⁵ *ibid* [103].

⁶⁶ *ibid* [110].

Conclusion

While the law on fixtures is relatively clear, its application in individual cases often raises difficulties. This case illustrates that the law and case law relating to fixtures is complex and multi-layered. However, the outcome provides key points that can be applied in similar disputes, including: (i) identifying whether the party bearing the burden of proof has discharged that burden, having regard to whether the available evidence was adequate to permit any reliable finding; (ii) applying the burden of proof doctrine, as outlined by Lord Brandon in *The Popi M* with reference to the earlier analysis of Lord Leggatt, so that evidence is adequate to enable a reliable assessment of probability, in the interests of reaching a just and fair decision and avoiding speculation or inference without a reliable basis; and (iii) applying common sense and logic when determining the issues.

Where there are inconsistencies in the evidence of witnesses called by an appellant/respondent, these should be thoroughly investigated, assessed and given the appropriate weight. When relying on case law, decisions should be correctly applied to the facts before the court, to avoid misconstruing their application. The court should also avoid framing questions in a manner that invites speculation.⁶⁷

The Law Reform Commission's *Consultation Paper on General Law of Landlord and Tenant* (published in December 2003), and the Report on The Law of Landlord and Tenant (published in November 2007), recommended the enactment of new statutory provisions to replace both the common law rules and section 17 of Deasy's Act.⁶⁸ They would designate as 'tenant's property' any property whether affixed or not brought onto, erected on, or installed in on or under the premises by the tenant or the tenant's predecessor in title, and would give the tenant a 'right of removal' in respect of such property.⁶⁹ Although the heads of the Landlord and Tenant Law Reform Bill were published by the Minister for Justice in 2011,⁷⁰ to date, the proposed legislation has not been enacted and so the proposals have yet to be implemented. It is improbable

⁶⁷ See the comments above under the heading 'Ownership of the Swan Yard windows'.

⁶⁸ Law Reform Commission, *Consultation Paper on General Law of Landlord and Tenant* (LRC CP 28—2003) [4.19]; Law Reform Commission, *Report: The Law of Landlord and Tenant* (LRC 85—2007) 62.

⁶⁹ (LRC 85—2007) 63-66.

⁷⁰ JCW Wylie, *Wylie on Irish Landlord and Tenant Law* (4th edn, Bloomsbury 2022) [9.25].



that the said statutory provisions, if enacted, would have had any impact on the outcome of this case as the Windows did not fall within the category of a 'tenant's property'. It was held that the Windows formed part and parcel of the Café and were owned by the Landlord for reasons already outlined including the fact that the Windows were commissioned and paid for (on the balance of probabilities) by Mr Bewley. As recommended by Wylie, the status of fixtures and fittings should be recorded in the lease. This is of particular significance where unusual arrangements have been agreed between the landlord and the tenant. He stated '[a]ll too often this is not done and the parties find to their cost that the failure is a recipe for disputes.'⁷¹

⁷¹ *ibid* [9.01].