

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Ramsay
v. Gilchrist and others, from the Supreme
Court of New South Wales, delivered May 26th
1892.*

Present :

THE EARL OF SELBORNE.

LORD WATSON.

LORD MACNAGHTEN.

LORD MORRIS.

SIR RICHARD COUCH.

LORD SHAND.

[Delivered by the Earl of Selborne.]

THEIR Lordships have before them a very well considered and able Judgment of the Full Court, consisting of the Chief Justice and two Puisne Judges; and it might, perhaps, have been sufficient for their Lordships to say, that they are satisfied with that Judgment, and with the reasons given for it; but they will make a few observations upon the principal points raised in the argument.

Their Lordships have been told, by Counsel for the Appellant, that they will for the first time be taking charitable gifts out of the Statute 27 Elizabeth cap. 4., if they affirm the judgment appealed from. Had their Lordships heard Counsel for the Respondents, they would undoubtedly have been told that if they did otherwise they would for the first time be laying down the law that voluntary charitable gifts are within the statute of 27 Elizabeth. On which side does the argument from novelty preponderate? It seems to their Lordships that if for nearly

300 years since the passing of that statute, taking into account the great severity of its application by the Courts, there has been no example of its being applied to this particular class of cases, that is strong evidence to show that it never was supposed so to apply; for the cases have been frequent in which the statute has been the subject of litigation and decision; charitable gifts have also been extremely frequent; and there might very often have been motives for seeking to defeat such gifts in the lifetime of the donor, if that had been understood to be law.

Their Lordships cannot help thinking that the reason, why there has been no decision on the subject up to the present time, is because no person supposed that the statute did apply to such a case. In the absence of any such decision, the first duty of a Court is to consider what the statute says; and on the face of it their Lordships think that no reasonable person would suppose it to apply to charitable gifts; not only because it would be a very strong proposition to suggest that all voluntary gifts to charities are *primâ facie* fraudulent and covinous, but because it appears on the face of the statute that all persons who might be parties to the gifts comprised under the words "covinous and fraudulent" are treated as wrong-doers, who may be penally proceeded against.

The third section of the statute makes anyone who maintains a title under such a conveyance liable to forfeit "one year's value" of the property in question, and also to suffer "imprisonment for one half year, without bail or main-prize." It would be extravagant to suppose, that all trustees of voluntary charities maintaining their title were meant by the Legislature to be treated as wrong-doers in that sense. All the subsequent decisions have reference to

cases where no public interest was in question. Where two circumstances were found united, an original voluntary gift to a private person, and then a contrary and inconsistent sale by the author of that gift, the Judges, straining the language of the statute, raised from those circumstances a presumption of the fraudulent intent struck at by the statute. Though those decisions might not commend themselves to their Lordships if the matter were new, it is necessary for them to adhere to the law, now so well established. Would it, however, be reasonable, without any precedent or authority for the application of that law to charities, now, for the first time, after a lapse of nearly 300 years, to make such a precedent? Their Lordships think that it would not be reasonable, bearing in mind that, under a strained interpretation of the statute, a presumption of what the statute calls fraud and covin was made in the cases to which the authorities do apply. In this case the presumption is the other way. The presumption, which there is nothing in those authorities to repel, is, that a charity is charitable and not fraudulent, and therefore *primâ facie* not to be treated as covinous. It is in the last degree improbable, that, either at the time when the statute 27 Elizabeth, cap. 4, was passed, or during the sixteen years which elapsed between that time and the passing of the statute 43 Elizabeth, cap. 4, any such view was or could have been taken of gifts given to charities as would bring them *primâ facie* within the earlier statute.

But the matter does not rest there; because it is impossible to doubt that it was the intention of the Legislature, when passing the statute 43 Elizabeth, cap. 4, to recognise as good and valid all charitable gifts which were not taken out of that statute by the provisoes

contained in it, relating to purchasers for valuable consideration. If there had been no exceptions made, the statute would have operated upon all voluntary gifts for charitable purposes, showing that in point of law they were presumed, not to be covinous or fraudulent, but the reverse. Of course there might be an actual fraud taking the form of a pretended gift to charity. With that their Lordships have nothing to do; but in the absence of any evidence of actual fraud, all charitable gifts, without exception, voluntary or not, were treated by that statute as proper to be protected by law. Various cases were excepted from the statute. One of them was the case of a man who had purchased "upon valuable consideration of money or land, any estate or interest of, in, to, or out of, any lands . . . given, limited, or appointed to any the charitable uses above-mentioned, without fraud or covin, having no notice of the same charitable use." If, therefore, the purchaser, though for value, had notice of the charitable use, the purchase was not taken out of the statute, but was to be treated as a valid gift to charity within the protection and provisions of the 1st section; and that proviso was absolute, without reference to the manner in which the purchaser had purchased, or to the person from whom he purchased, whether the case might be that of a conveyance by the original grantor, or by a trustee breaking his trust. The succeeding words, dealing with the persons by whose act, in making a conveyance to a purchaser for valuable consideration without notice, the charity might lose the lands, made those persons liable to pay the value to the commissioners or to the charity. So far from treating the charity as one which can be avoided by the donor for his own benefit, the enactment is, that when the purchaser without notice is safe, the persons who put him

in that situation are, as far as they can, to make good the loss to the charity. It was suggested that this applied only to breaches of trust by trustees. Their Lordships find nothing in the words of the statute which can lay any sufficient foundation for that argument. The latter part of the section relates, not only to a person who "being put in trust hath or shall break " the same trust," but to any one who shall do so, "having notice of the charitable uses " above-mentioned;" and again, not only to one who "shall break the same trust," but to any one who shall defraud the same uses, by any " conveyance, gift, grant, lease, demise, release, " or conversion whatsoever."

Their Lordships think that if before the passing of the Act of 1601 the earlier statute could have been held to strike at gifts to charitable uses, the subsequent statute would for the time to come have prevented such a construction. But the subsequent statute is cogent evidence that the earlier statute was never so intended or understood.

Their Lordships will humbly advise Her Majesty to affirm the decree appealed from, and to dismiss the appeal with costs.

