17. 1955

In the Privy Council.

No. 20 of 1953.

ON APPEAL FROM THE SUPREME COURT OF CANADA

IN THE MATTER of the ESTATE of HERBERT COPLIN COX, deceased

AND

IN THE MATTER of the TRUSTEE ACT, R.S.O. Ch. 165, Sec. 59

AND

IN THE MATTER of the JUDICATURE ACT, R.S.O. Ch. 100, Sec. 106 and Rule 600 of the Rules of Practice and Procedure passed pursuant thereto.

BETWEEN

EDWIN G. BAKER (Respondent to Originating Motion) ... *Appellant*

AND

NATIONAL TRUST COMPANY, LIMITED (Applicant on Originating Motion), THE BOARD OF DIRECTORS OF THE CANADA LIFE ASSURANCE COMPANY, MARGARET JANE ARDAGH, WILLIAM BURT SHEPARD, THE OFFICIAL GUARDIAN FOR THE PROVINCE OF ONTARIO and THE PUBLIC TRUSTEE FOR THE PROVINCE OF ONTARIO (Respondents to Originating Motion) ... ... *Respondents*

— AND BETWEEN —

THE PUBLIC TRUSTEE FOR THE PROVINCE OF ONTARIO (Respondents to Originating Motion) ... *Appellant*

AND

NATIONAL TRUST COMPANY, LIMITED (Applicant on Originating Motion), THE BOARD OF DIRECTORS OF THE CANADA LIFE ASSURANCE COMPANY, EDWIN G. BAKER, MARGARET JANE ARDAGH, WILLIAM BURT SHEPARD, THE OFFICIAL GUARDIAN FOR THE PROVINCE OF ONTARIO (Respondents to Originating Motion) ... ... *Respondents*

— AND —

IN THE MATTER of the ESTATE OF LOUISE BOGART COX deceased.

AND

IN THE MATTER of the TRUSTEE ACT, R.S.O. Ch. 165, Sec. 59

AND

IN THE MATTER of the JUDICATURE ACT, R.S.O. Ch. 100, Sec. 106 and Rule 600 of the Rules of Practice and Procedure passed pursuant thereto

BETWEEN

EDWIN G. BAKER (Respondent to Originating Motion) ... *Appellant*

AND

NATIONAL TRUST COMPANY, LIMITED (Applicant on Originating Motion), THE BOARD OF DIRECTORS OF THE CANADA LIFE ASSURANCE COMPANY, WILLIAM BURT SHEPARD, THE OFFICIAL GUARDIAN FOR THE PROVINCE OF ONTARIO, THE PUBLIC TRUSTEE FOR THE PROVINCE OF ONTARIO and LIDA LOUISE SHEPARD (Respondents to Originating Motion) ... ... *Respondents*

— AND BETWEEN —

THE PUBLIC TRUSTEE FOR THE PROVINCE OF ONTARIO (Respondent to Originating Motion) ... *Appellant*

AND

NATIONAL TRUST COMPANY, LIMITED (Applicant on Originating Motion), THE BOARD OF DIRECTORS OF THE CANADA LIFE ASSURANCE COMPANY, EDWIN G. BAKER, ~~MARGARET JANE ARDAGH,~~ WILLIAM BURT SHEPARD, THE OFFICIAL GUARDIAN FOR THE PROVINCE OF ONTARIO and LIDA LOUISE SHEPARD ... ... *Respondents.*

(Consolidated Appeals.)

RECORD OF PROCEEDINGS

INDEX OF REFERENCE.

EXHIBITS.

In the Privy Council.

No. 20 of 1953.

ON APPEAL FROM THE SUPREME COURT OF CANADA

IN THE MATTER of the ESTATE of HERBERT COPLIN COX, deceased

AND

IN THE MATTER of the ESTATE of LOUISE BOGART COX, deceased

AND

IN THE MATTER of THE TRUSTEE ACT, R.S.O. Ch. 165, Sec. 59

AND

IN THE MATTER of the JUDICATURE ACT, R.S.O. Ch. 100, Sec. 106 and Rule 600 of the Rules of Practice and Procedure passed pursuant thereto.

BETWEEN

EDWIN G. BAKER (Respondent to Originating Motion) ... *Appellant*

AND

NATIONAL TRUST COMPANY, LIMITED AND OTHERS *Respondents*

— AND BETWEEN —

THE PUBLIC TRUSTEE FOR THE PROVINCE OF ONTARIO (Respondent to Originating Motion) ... *Appellant*

AND

NATIONAL TRUST COMPANY, LIMITED AND OTHERS *Respondents.*

(Consolidated Appeals.)

RECORD OF PROCEEDINGS

In the Supreme Court of Ontario.

No. 1. Originating Notice of Motion. — March 1949.

HERBERT COPLIN COX, deceased.

No. 1.

Originating Notice of Motion.

IN THE SUPREME COURT OF ONTARIO.

IN THE MATTER OF the Estate of HERBERT COPLIN COX, late of the Town Of Oakville, in the County of Halton, in the Province of Ontario ;

IN THE MATTER OF The Trustee Act, R.S.O. Ch. 165, Sec. 59 ;

AND IN THE MATTER OF The Judicature Act, R.S.O. Ch. 100, Sec. 106, and Rule 600 of the Rules of Practice and Procedure passed pursuant thereto.

TAKE NOTICE that, by Special Leave, a motion will be made before the Honourable Mr. Justice Wells in Court at Osgoode Hall, in the City of Toronto, on Thursday the 28th day of April, 1949, at the hour of 11 o'clock in the forenoon or so soon thereafter as the motion can be heard on behalf of National Trust Company Limited and Alfred Herbert Cox, Administrators with Will Annexed and Trustees of the last will and testament and codicil of Herbert Coplin Cox, deceased, to determine :

(1) (a) Whether or not the bequest provided for in Clause 16 of the Will of the late Herbert Coplin Cox in the following terms :

> " SUBJECT as hereinbefore provided, and with respect to the balance of my residuary estate which may remain in my Trustees' possession, my said Trustees shall hold the same upon trust as follows :
>
> To PAY the income thereof in perpetuity for charitable purposes only ; the persons to benefit directly in pursuance of such charitable purposes are to be only such as shall be or shall have been employees of The Canada Life Assurance Company and/or the dependents of such employees of said The Canada Life Assurance Company ; subject to the foregoing restrictions, the application of such income, including the amounts to be expended and the persons to benefit therefrom, shall be determined by the Board of Directors of the said The Canada Life Assurance Company, as they, the said Board of Directors, in their absolute discretion shall from time to time decide. The Trust Fund is to be known as ' The Cox Foundation ' in memory of the family whose name has been so long associated with the said Company."

is a valid charitable bequest.

(b) In the event of the bequest to " The Cox Foundation " as set out in (1) (a) above being held to be an invalid charitable bequest, what disposition is to be made of the residuary estate and what persons, if any, are to take, and in what proportions ?

(2) In the event of the said bequest to " The Cox Foundation " being held to be a valid charitable bequest, for the opinion, advice or direction of the Court upon the following questions :

(a) Must the Administrators pay out of the estate succession duties computed in accordance with the relevant provisions of the Dominion Succession Duty Act, 1940, as amended, and the Ontario Succession Duty Act, 1939, as amended, if the aforesaid bequest is assessed otherwise than to a " charitable organization " as provided in section 7 (1) (d) of the Dominion Succession Duty Act and section 4 (1) of the Ontario Succession Duty Act.

(b) If the answer to 2 (a) is " No " must the Administrators pay out of the estate of the deceased duties computed in accordance with the relevant provisions of the Ontario Succession Duty Act if the Treasurer of Ontario determines otherwise under the provisions of section 4 (2) of the Ontario Succession Duty Act, 1939, as amended ?

(c) Must the Trustees pay an income tax computed in accordance with the relevant provisions of the Income Tax Act (1948, Canada) if assessed in respect of income and otherwise than an organization operated exclusively for charitable purposes within the meaning of section 57, ss. (e) of the Income Tax Act (1948, Canada) ?

(3) For the opinion, advice or direction of the Court on the following question :

(a) Does any legatee, devisee, annuitant or beneficiary under the Will of the said deceased who refuses to confirm or do such acts to effectuate the validity of " The Cox Foundation " as a " charitable organization " or the bequest to the said Foundation as being for charitable purposes, forfeit any and every beneficial provision for such person under and by virtue of clause 20 of the said will, which is in the following terms :

" I HEREBY WILL AND DECLARE that, notwithstanding any of the devises and bequests hereinbefore made or contained, if any legatee, devisee, annuitant or beneficiary under my will enter litigation for the purpose of voiding, questioning, altering or setting aside this my will or any provision or term thereof, or refuses to confirm same or to do such acts and things as may be demanded for giving full effect to all or any of such dispositions, then and in every such case such legatee, devisee, annuitant or beneficiary shall thereupon forfeit all benefit hereunder, as any such step or conduct shall of itself make void any and every beneficial provision for such person or beneficiary herein contained, and as to the estate or benefit so forfeited I hereby declare that same shall form part of my residuary estate and be subject to the provisions and directions governing the disposition of said residuary estate, excepting always therefrom the said legatee, devisee, annuitant or beneficiary so offending as aforesaid if he or she would otherwise under the terms of this my will be entitled to share in or be benefited

In the Supreme Court of Ontario.

No. 1. Originating Notice of Motion. — March 1949— *continued.*

from such residuary estate, such persons so offending to be treated as having predeceased me and not entitled to share in any part of my estate under any of the provisions or devises herein contained."

AND TAKE NOTICE that in support of the said motion will be read the affidavit of John G. Hungerford filed with Exhibits therein referred to, and such further and other materials as counsel may advise.

DATED at Toronto, this day of March, A.D. 1949.

FRANK McCARTHY,
Canada Life Building, Toronto,
Solicitor for the Administrators.

To:

Mrs. Ella Jane Pearce, Vancouver, B.C.
Alfred H. Cox, Toronto, Ontario.
Mrs. Lillian Hall, Oakville, Ontario.
Frank Wallace Cox, Toronto, Ontario.
Wilfred M. Cox, Oakville Ontario.
Harold Kennedy Cox, Toronto, Ontario.
Gordon M. Cox, Hamilton, Ontario.
Mrs. Emma Barber, Toronto, Ontario.
E. Ross Toronto, Ontario.
Marg Jane (Dolly) Ardagh, Streetsville, Ontario.
Douglas Cox Ames, Toronto, Ontario.
John Ames Coombs, Toronto, Ontario.
George Stewart Ames, Toronto, Ontario.
Bruce Coleman Ames, Toronto, Ontario.
Miss Louise L. Shepard, Pasadena, California.
National Trust Company Limited and Alfred Herbert Cox, Executors of the Will of Louise Bogart Cox.
Percy D. Wilson, Esq., K.C., Official Guardian, on behalf of George Stewart Ames and Bruce Coleman Ames, infants under the age of 21 years.
Armand Racine, Esq., K.C., Public Trustee for the Province of Ontario, Toronto.
The Board of Directors, The Canada Life Assurance Company, Toronto.
The Honourable the Treasurer of Ontario, Toronto.
The Honourable the Minister of National Revenue, Ottawa.

No. 2.

Affidavit of John G. Hungerford.

In the Supreme Court of Ontario.

No. 2. Affidavit of John G. Hungerford. 17th March 1949.

IN THE SUPREME COURT OF ONTARIO.

IN THE MATTER OF the Estate of HERBERT COPLIN COX, late of the Town of Oakville, in the County of Halton, in the Province of Ontario ;

IN THE MATTER OF The Trustee Act, R.S.O. Ch. 165, Sec. 59 ;

AND IN THE MATTER OF The Judicature Act, R.S.O. Ch. 100, Sec. 106, and Rule 600 of the Rules of Practice and Procedure passed pursuant thereto.

I, JOHN G. HUNGERFORD, of the City of Toronto, in the County of York, Assistant General Manager, make oath and say :

1.—That I am an Assistant General Manager of the National Trust Company Limited.

2.—That now shown to me and marked Exhibit " A " to this my Affidavit is a notarial copy of the last Will and Testament, and Codicil, of Herbert Coplin Cox, who died on the 17th day of September, 1947. Administration with Will and Codicil annexed was granted by the Surrogate Court of the County of Halton on the 15th day of December, 1947, to National Trust Company Limited and Alfred Herbert Cox of the City of Toronto, in the County of York, nominees of Louise Bogart Cox.

3.—That certain questions have been raised as to the validity of the bequest in clause 16 of the said Will and depending on whether or not the bequest is valid certain questions as to the liability and the amounts of Succession Duties payable by the Administrators arise and likewise certain questions as to the liability to income tax payable by the Trustees, and in the event of the said bequest being held to be invalid questions arise as to the disposition to be made of the residuary estate.

4.—That the relevant provisions of the said Will to the questions raised are :

in the second clause to be found on page 1 of Exhibit " A "—

> " I DIRECT my Executors to pay from and out of my Estate, as soon after my decease as may be convenient, all my just debts, funeral and testamentary expenses, as well as Succession Duty, if any, which may be assessable or chargeable against any gift, devise, bequest or legacy herein contained and/or against benefits, if any, which my Wife, Louise Bogart Cox, may become entitled to under any Indenture or Indentures of Trust, if any, which I may create in my lifetime, as it

In the Supreme Court of Ontario.

No. 2. Affidavit of John G. Hungerford. 17th March 1949— *continued.*

is my intention that all of the same shall be paid free of Succession Duty. With power to my Trustee or Trustees, as the case may be, to pay within the period permitted by the Ontario Succession Duty Act, the duty in connection with interests in expectancy or in remainder, instead of postponing the payment of such duty until the interests fall into possession."

in the sixteenth clause to be found on page 4 of Exhibit " A "—

" SUBJECT as hereinbefore provided, and with respect to the balance of my residuary estate which may remain in my Trustees' possession, my said Trustees shall hold same upon trust as follows :

TO PAY the income thereof in perpetuity for charitable purposes only ; the persons to benefit directly in pursuance of such charitable purposes are to be only such as shall be or shall have been employees of The Canada Life Assurance Company and/or the dependants of such employees of said The Canada Life Assurance Company ; subject to the foregoing restrictions, the application of such income, including the amounts to be expended and the persons to benefit therefrom, shall be determined by the Board of Directors of the said The Canada Life Assurance Company, as they, the said Board of Directors, in their absolute discretion shall from time to time decide. The Trust Fund is to be known as ' The Cox Foundation ' in memory of the family whose name has been so long associated with the said Company."

and in the twentieth clause to be found on page 4 of Exhibit " A "—

" I HEREBY WILL AND DECLARE that, notwithstanding any of the devises and bequests hereinbefore made or contained, if any legatee, devisee, annuitant or beneficiary under my will enter litigation for the purpose of voiding, questioning, altering or setting aside this my will or any provisions or term thereof, or refuses to confirm same or to do such acts and things as may be demanded for giving full effect to all or any of such dispositions, then and in every such case such legatee, devisee, annuitant or beneficiary shall thereupon forfeit all benefit hereunder, as any such step or conduct shall of itself make void any and every beneficial provisions for such person or beneficiary herein contained and as to the estate or benefit so forfeited, I hereby declare that same shall form part of my residuary estate and be subject to the provisions and directions governing the disposition of said residuary estate, excepting always therefrom the said legatee, devisee, annuitant or beneficiary so offending as aforesaid if he or she would otherwise under the terms of this my will be entitled to share in or be benefited from such residuary estate, such persons so offending to be treated as having predeceased me and not entitled to share in any part of my estate under any of the provisions or devises herein contained.

5.—On information known to me and furnished by Mr. A. H. Cox of Toronto and Mr. B. V. Moore of Peterboro, it would appear :

(a) That Herbert Coplin Cox died on the 17th day of September, 1947, leaving him surviving a wife, Louise Bogart Cox, but no children. The said Louise Bogart Cox died on the 18th day of November, 1948, and probate of her last will was granted to National Trust Company Limited and Alfred Herbert Cox on the 22nd day of February, 1949.

(b) That Herbert Coplin Cox was the son of the late Senator George A. Cox and his wife Margaret Hopkins. The other children to this marriage were Edward Cox, Fred George Cox, Mrs. Emma Jane Davis and Mrs. Mary Louise Ames, all of whom predeceased the said Herbert Coplin Cox. None of them had children other than Mrs. Ames who had two children, namely Mrs. Edith Coombs and George Albert Ames, both of whom predeceased Herbert Coplin Cox, and Mrs. Coombs left surviving a son, John Ames Coombs, Toronto. George Albert Ames left the following: Douglas Cox Ames, George Stewart Ames and Bruce Coleman Ames, all of Toronto, of whom the last two are infants under the age of twenty-one years and all were alive at the date of the death of Herbert Coplin Cox.

(c) That Herbert Coplin Cox's father, the late Senator George A. Cox, had no sisters and only one brother, Aaron Cox, who predeceased Herbert Coplin Cox and who had the following children who survived Herbert Coplin Cox: Ella Jane Pearce, Vancouver, Alfred H. Cox, Toronto, Frank Wallace Cox, Toronto, Wilfred Maynard Cox, Oakville, Mrs. Lillian Lucinda Hall, Oakville, Harold Kennedy Cox, Toronto, Gordon Manning Cox, Hamilton, Mrs. Emma Agnes Ruth Barber, Toronto, Ernest Ross Cox, Toronto. Three other children predeceased the late Herbert Coplin Cox, namely George Albertus Cox, Edward William Cox and Mrs. Margaret Gertrude Brown.

(d) That Herbert Coplin Cox's mother, formerly Margaret Hopkins, had three brothers and a sister, all of whom predeceased the said Herbert Coplin Cox. The sister, Mrs. Mary Morrow, had three children, Emma Jane Morrow, William George Morrow and Mary I. Walker, all of whom predeceased the said Herbert Coplin Cox. Two of the brothers, Copeland Hopkins and Daniel Hopkins, died leaving no children. The third brother, William Hopkins, left him surviving one daughter, Margaret Jane Ardagh, who now lives at Streetsville, Ontario.

6.—That now shown to me and marked Exhibit " B " is a chart indicating how, I am advised, the degrees of consanguinity of the known next of kin are computed and how one-third of the residue, in the event of an intestacy, should be distributed equally per capita among all of the next of kin related in the fourth degree alive at the date of the death of Herbert Coplin Cox, and who are, I am advised and verily believe:

Mrs. Ella Jane Pearce, Vancouver, B.C.,
Alfred H. Cox, Toronto, Ontario.
Frank Wallace Cox, Toronto, Ontario,
Wilfred M. Cox, Oakville, Ontario,
Mrs. Lillian Hall, Oakville, Ontario,

In the Supreme Court of Ontario.

No. 2. Affidavit of John G. Hungerford. 17th March 1949—*continued.*

Harold Kennedy Cox, Toronto, Ontario,
Gordon M. Cox, Hamilton, Ontario,
Mrs. Emma Barber, Toronto, Ontario,
E. Ross Cox, Toronto, Ontario,
Margaret Jane (Dolly) Ardagh, Streetsville, Ontario,
Douglas Cox Ames, Toronto, Ontario,
George Stewart Ames, Toronto, Ontario,
Bruce Coleman Ames, Toronto, Ontario,
the last two being infants under the age of twenty-one years.

SWORN BEFORE ME, at the City of Toronto, in the County of York, this 17th day of March, A.D. 1949 } "J. G. HUNGERFORD."

"H. T. WHITE,"
A Commissioner, etc.

No. 3.

Affidavit of Edwin G. Baker.

No. 3. Affidavit of Edwin G. Baker. 5th April 1949.

IN THE SUPREME COURT OF ONTARIO.

IN THE MATTER OF the Estate of HERBERT COPLIN COX, late of the Town of Oakville, in the County of Halton, in the Province of Ontario ;

IN THE MATTER OF The Trustee Act, R.S.O. Ch. 165, Sec. 59 ;

AND IN THE MATTER OF The Judicature Act, R.S.O. Ch. 100. Sec. 106, and Rule 600 of the Rules of Practice and Procedure passed pursuant thereto.

I, EDWIN G. BAKER, of the City of Toronto, in the County of York, Executive, make oath and say :

1.—That I am President of The Canada Life Assurance Company.

2.—That the late Herbert Coplin Cox in his last will and testament in clause 16 provided :

"SUBJECT as hereinbefore provided, and with respect to the balance of my residuary estate which may remain in my Trustees' possession, my said Trustees shall hold same upon trust as follows :

To PAY the income thereof in perpetuity for charitable purposes only ; the persons to benefit directly in pursuance of such charitable purposes are to be only such as shall be or shall have been employees of The Canada Life Assurance Company and/or the dependents of such

employees of said The Canada Life Assurance Company; subject to the foregoing restrictions, the application of such income, including the amounts to be expended and the persons to benefit therefrom, shall be determined by the Board of Directors of the said The Canada Life Assurance Company, as they, the said Board of Directors, in their absolute discretion shall from time to time decide. The Trust Fund is to be known as ' The Cox Foundation ' in memory of the family whose name has been so long associated with the said Company."

3.—That the persons who might benefit under clause 16 of the said will, as being only such as shall be or shall have been employees of The Canada Life Assurance Company, number, as of this date, I am advised by Clifford McCarthy, Personnel Manager of The Canada Life Assurance Company, and verily believe :

	Ontario	Balance of Canada	United States	B.I.D.	Total
Present Executives, Managers, Office, and Other Staff ...	854	144	52	168	1,218
Present Sales Organization ...	229	174	142	125	670
TOTAL	1,083	318	194	293	1,888
Former Executives, Managers, Office and Other Staff ...	3,451	947	441	698	5,537
Former Sales Organization ...	1,423	2,379	1,783	2,454	8,039
GRAND TOTAL	5,957	3,644	2,418	3,445	15,464

4.—That the persons who might benefit under clause 16 of the said will as being dependents of such employees, I am advised might, on the basis of a normal average of dependents, increase the number in each class two-fold, in which event the result produced would be :

	Ontario	Balance of Canada	United States	B.I.D.	Total
GRAND TOTAL	11,914	7,288	4,836	6,890	30,928

5.—That I am further advised by the said Clifford McCarthy that the number of former executives, managers, office and other staff and former sales organization is a minimum number, as the Company's records in this respect only go back to the year 1924.

SWORN before me at the City of Toronto, in the County of York, this 5th day of April, A.D. 1949.

" EDWIN G. BAKER."

" J. F. H. McCARTHY,"
A Commissioner, etc.

In the Supreme Court of Ontario.

No. 4.

Affidavit of Clifford McCarthy.

No. 4. Affidavit of Clifford McCarthy. 26th April 1949.

IN THE SUPREME COURT OF ONTARIO.

IN THE MATTER OF The Estate of HERBERT COPLIN COX, late of the Town of Oakville, in the County of Halton, in the Province of Ontario ;

IN THE MATTER OF The Trustee Act, R.S.O. Ch. 165, Sec. 59 ;

AND IN THE MATTER OF The Judicature Act, R.S.O. Ch. 100, Sec. 106, and Rule 600 of the Rules of Practice and Procedure passed pursuant thereto.

I, CLIFFORD McCARTHY, of the City of Toronto, in the County of York, Manager, make oath and say :

1.—That I am Personnel Manager of The Canada Life Assurance Company, and have knowledge of the matters to which I hereinafter depose.

2.—That I have been advised that the late Herbert Coplin Cox in his last Will and Testament in Clause 16 provided :

> " SUBJECT as hereinbefore provided, and with respect to the balance of my residuary estate which may remain in my Trustees' possession, my said Trustees shall hold same upon trust as follows :
>
> TO PAY the income thereof in perpetuity for charitable purposes only ; the persons to benefit directly in pursuance of such charitable purposes are to be only such as shall be or shall have been employees of The Canada Life Assurance Company and/or the dependents of such employees of said The Canada Life Assurance Company ; subject to the foregoing restrictions, the application of such income, including the amounts to be expended and the persons to benefit therefrom, shall be determined by the Board of Directors of the said The Canada Life Assurance Company, as they, the said Board of Directors, in their absolute discretion shall from time to time decide. The Trust Fund is to be known as ' The Cox Foundation ' in memory of the family whose name has been so long associated with the said Company."

3.—That the persons who might benefit under Clause 16 of the said will, as being only such as shall be or shall have been employees of The Canada Life Assurance Company, number as of this date, approximately—

	Ontario	Balance of Canada	United States	B.I.D.	Total
Present Executives, Managers, Office and other Staff ...	854	144	52	168	1,218
Present Sales Organization ...	229	174	142	125	670
TOTAL	1,083	318	194	293	1,888
Former Executives, Managers, Office and other Staff ...	3,451	947	441	698	5,537
Former Sales Organization ...	1,423	2,379	1,783	2,454	8,039
GRAND TOTAL	5,957	3,644	2,418	3,445	15,464

4.—That the persons who might benefit under Clause 16 of the said will as being dependants of such employees, on the basis of a normal average of dependants, might increase the number in each class two-fold, in which event the result produced would be :

	Ontario	Balance of Canada	United States	B.I.D.	Total
GRAND TOTAL	11,914	7,288	4,836	6,890	30,928

5.—That the number of former executives, managers, office and other staff and former sales organization is a minimum number, as the Company's records in this respect only go back to the year 1924.

6.—That The Canada Life Assurance Company operates in Canada at a Head Office located in the City of Toronto in the Province of Ontario, and as well, maintains branch offices in all other nine provinces. The Canada Life Assurance Company in addition has its chief office for the United Kingdom in London, England, and as well, maintains offices at Belfast, Northern Ireland, Hamilton, Bermuda, and Dublin, Ireland. The Canada Life Assurance Company also maintains offices in the following states of the United States of America, namely : New Jersey, New York, Pennsylvania, Ohio, Michigan, Illinois, California, Oregon, Minnesota and Washington, and did, but does not now, maintain offices in Alabama, Florida and Texas. The Canada Life Assurance Company also maintains an office in Honolulu, Hawaiian Islands.

SWORN before me at the City of Toronto, in the County of York, this 26th day of April, 1949. } " J. C. McCARTHY "

" J. F. H. McCARTHY,"
A Commissioner, etc.

In the Supreme Court of Ontario.

No. 5.

Affidavit of Clifford McCarthy.

No. 5. Affidavit of Clifford McCarthy. 10th May 1949.

IN THE MATTER OF the Estate of HERBERT COPLIN COX, late of the Town of Oakville, in the County of Halton, in the Province of Ontario ;

IN THE MATTER OF The Trustee Act, R.S.O. Ch. 165, Sec. 59 ;

AND IN THE MATTER OF The Judicature Act, R.S.O. Ch. 100, Sec. 106, and Rule 600 of the Rules of Practice and Procedure passed pursuant thereto.

I, CLIFFORD McCARTHY, of the City of Toronto, in the County of York, Manager, make oath and say :

1.—THAT I am Personnel Manager of The Canada Life Assurance Company, and have knowledge of the matters to which I hereinafter depose.

2.—THAT the information at present available in the files of The Canada Life Assurance Company discloses typical cases indicated in Exhibit " A " to this my Affidavit and hereto annexed, which might, by reason of the unfortunate circumstances in which the persons find themselves, qualify on investigation as beneficiaries intended under The Cox Foundation. These cases arise both before and after a person is entitled to participate in the Company's Pension Plan and where the only available resources are either the pay or the pension which is inadequate to take care of the expenses resulting from misfortune. A further survey might, and probably would, indicate other cases worthy of investigation to a number impossible to estimate.

3.—THAT the Staff Pension Fund provided by The Canada Life Assurance Company is as set out in the Booklet now shown to me and marked Exhibit " B " to this my Affidavit. This Booklet covers the Office Employees. Plans similar are set up, but differing in details, covering the Branch Managers and Assistant Branch Managers, Agents and Building Employees. In general the plans provide for a normal retirement age, males at 65 and females at 60. The contributions are based on a minimum of 5 per cent. and a maximum of 10 per cent. of salary and the Company makes grants equal to the contributions of the contributor. The pension payable on retirement is based on the contributions made plus the Company grants. The pension is payable for 10 years or during the lifetime of the pensioner, whichever shall be the longer. Provision is made in the case of disability before retirement on a similar basis. Likewise provision is made in the case of the death of a contributor before retirement. The amount which the contributor receives is dependent on the total amount of contributions made and this depends on the age at which he joins the plan and the amount of the contribution made by him annually.

No. 5.
Affidavit of Clifford McCarthy. 10th May 1949—
continued.

4.—THAT a letter dated April 30th, 1949, perhaps typical, received by Mr. R. G. McDonald, Agency Supervisor, is now shown to me and marked Exhibit " C " to this my Affidavit. This is from the wife of an employee who joined the Company in 1916 and resigned in March, 1936, and died in February, 1941. He resigned to go to another Company in March, 1936, and from that point until his death was in financial difficulty. The wife has no resources and since the death of her husband has been working making a precarious livelihood and has a difficult time in getting along.

SWORN before me at the City of Toronto, in the County of York, this 10th day of May, A.D. 1949.

" J. C. McCARTHY "

" J. F. H. McCARTHY,"
A Commissioner, etc.

No. 6.

Formal Judgment.

No. 6.
Formal Judgment. 27th January 1950.

IN THE SUPREME COURT OF ONTARIO.

The Honourable Mr. Justice WELLS.

Friday, the 27th day of January, 1950.

IN THE MATTER OF the Estate of HERBERT COPLIN COX, late of the Town of Oakville, in the County of Halton, in the Province of Ontario ;

IN THE MATTER OF The Trustee Act, R.S.O., Ch. 165, Sec. 59 ;

AND IN THE MATTER OF The Judicature Act, R.S.O., Ch. 100, Sec. 106, and Rule 600 of the Rules of Practice and Procedure passed pursuant thereto.

(SEAL)

UPON MOTION made unto this Court on the 28th day of April, 1949, and the 12th day of May, 1949, by counsel on behalf of National Trust Company Limited and Alfred Herbert Cox, Administrators with the Will Annexed and Trustees of the Last Will and Testament and codicil of Herbert Coplin Cox, deceased, for Judgment to determine the following questions

In the Supreme Court of Ontario.

No. 6. Formal Judgment. 27th January 1950—*continued.*

respecting the administration of the estate of the said Herbert Coplin Cox, namely :

(1) (a) Whether or not the bequest provided for in Clause 16 of the will of the late Herbert Coplin Cox in the following terms :

> " SUBJECT as hereinbefore provided, and with respect to the balance of my residuary estate which may remain in my Trustees' possession, my said Trustees shall hold the same upon trust as follows :
>
> TO PAY the income thereof in perpetuity for charitable purposes only ; the persons to benefit directly in pursuance of such charitable purposes are to be only such as shall be or shall have been employees of The Canada Life Assurance Company and/or the dependents of such employees of said The Canada Life Assurance Company ; subject to the foregoing restrictions, the application of such income, including the amounts to be expended and the persons to benefit therefrom, shall be determined by the Board of Directors of the said The Canada Life Assurance Company, as they, the said Board of Directors, in their absolute discretion shall from time to time decide. The Trust Fund is to be known as ' The Cox Foundation ' in memory of the family whose name has been so long associated with the said Company."

is a valid charitable bequest.

(b) In the event of the bequest to " The Cox Foundation " as set out in (1) (a) above being held to be an invalid charitable bequest, what disposition is to be made of the residuary estate and what persons, if any, are to take, and in what proportions ?

(2) In the event of the said bequest to " The Cox Foundation " being held to be a valid charitable bequest, for the opinion, advice or direction of the Court upon the following questions :

(a) Must the Administrators pay out of the estate succession duties computed in accordance with the relevant provisions of the Dominion Succession Duty Act, 1940, as amended, and the Ontario Succession Duty Act, 1939, as amended, if the aforesaid bequest is assessed otherwise than to a " charitable organization " as provided in section 7 (1) (d) of the Dominion Succession Duty Act and section 4 (1) of the Ontario Succession Duty Act.

(b) If the answer to 2 (a) is " No " must the Administrators pay out of the estate of the deceased duties computed in accordance with the relevant provisions of the Ontario Succession Duty Act if the Treasurer of Ontario determines otherwise under the provisions of section 4 (2) of the Ontario Succession Duty Act, 1939, as amended ?

(c) Must the Trustees pay an income tax computed in accordance with the relevant provisions of the Income Tax Act (1948, Canada) if assessed in respect of income and otherwise than an organization

operated exclusively for charitable purposes within the meaning of section 57, ss. (e) of the Income Tax Act (1948, Canada) ?

(3) For the opinion, advice or direction of the Court on the following question :

(a) Does any legatee, devisee, annuitant or beneficiary under the Will of the said deceased who refuses to confirm or do such acts to effectuate the validity of " The Cox Foundation " as a " charitable organization " or the bequest to the said Foundation as being for charitable purposes, forfeit any and every beneficial provision for such person under and by virtue of clause 20 of the said will, which is in the following terms :

> " I HEREBY WILL AND DECLARE that, notwithstanding any of the devises and bequests hereinbefore made or contained, if any legatee, devisee, annuitant or beneficiary under my will enter litigation for the purpose of voiding, questioning, altering or setting aside this my will or any provision or term thereof, or refuses to confirm same or to do such acts and things as may be demanded for giving full effect to all or any of such dispositions, then and in every such case such legatee, devisee, annuitant or beneficiary shall thereupon forfeit all benefit hereunder, as any such step or conduct shall of itself make void any and every beneficial provision for such person or beneficiary herein contained, and as to the estate or benefit so forfeited I hereby declare that same shall form part of my residuary estate and be subject to the provisions and directions governing the disposition of said residuary estate, excepting always therefrom the said legatee, devisee, annuitant or beneficiary so offending as aforesaid if he or she would otherwise under the terms of this my will be entitled to share in or be benefited from such residuary estate, such persons so offending to be treated as having predeceased me and not entitled to share in any part of my estate under any of the provisions or devises herein contained."

in the presence of counsel for National Trust Company Limited and Alfred H. Cox, executors of the Last Will and Testament of Louise Bogart Cox, deceased, counsel for those persons comprising the Board of Directors of The Canada Life Assurance Company as set out in the affidavit of John William Blain, filed, counsel for Louise L. Shepard, counsel for Alfred H. Cox in his capacity as a beneficiary, counsel for Margaret Jane Ardagh, counsel for Douglas Cox Ames, counsel for William Burt Shepard, counsel for the Public Trustee who has intervened under the provisions of Section 6, subsection 5, of the Charities Accounting Act, R.S.O. 1937, chapter 167, and counsel for the Official Guardian on behalf of George Stewart Ames and Bruce Coleman Ames, infants, no one appearing for Ella Jane Pearce, Lillian Hall, Frank Wallace Cox, Wilfred M. Cox, Harold Kennedy Cox, Gordon M. Cox, Emma Barber, E. Ross Cox, John Ames Coombs, The Honourable

In the Supreme Court of Ontario.

No. 6. Formal Judgment. 27th January 1950— *continued.*

the Treasurer of Ontario and The Honourable the Minister of National Revenue although duly served with notice ; upon reading the Order of The Honourable Mr. Justice Wells, dated the 19th day of March, 1949, the affidavit of John G. Hungerford, filed, and the Exhibits therein referred to, the two affidavits of Clifford McCarthy, filed, and the exhibits therein referred to, the affidavit of Edwin G. Baker, filed, and the said affidavit of John William Blain, filed, and upon hearing what was alleged by counsel aforesaid with respect to question number (1), by consent of counsel aforesaid no argument being adduced at this time with respect to questions numbered (2) and (3), and this Court having been pleased to direct that the motion should stand over for judgment and the same coming on this day for judgment,—

1.—THIS COURT DOTH ORDER that Margaret Jane Ardagh be and she is hereby appointed to represent for the purposes of this motion any other of the next-of-kin of the said Herbert Coplin Cox in the same interest as the said Margaret Jane Ardagh, not specifically mentioned in the Last Will and Testament and codicil of the said Herbert Coplin Cox and not served with notice.

2.—AND THIS COURT DOTH FURTHER ORDER that Edwin G. Baker, one of the persons who comprise the Board of Directors of The Canada Life Assurance Company, be and he is hereby appointed to represent for the purposes of this motion the employees of The Canada Life Assurance Company, and the Public Trustee be and he is hereby appointed to represent those other persons, who may benefit under the bequest provided in Clause 16 of the Last Will and Testament of the said Herbert Coplin Cox.

3.—AND THIS COURT DOTH FURTHER ORDER that the Official Guardian be and he is hereby appointed to represent for the purposes of this motion any unascertained persons who may be interested in the residue of the said estate in the event of an intestacy thereof, and are not represented hereon under the provisions of paragraph 1 hereof.

4.—AND THIS COURT DOTH DECLARE in answer to part (a) of question number (1) that Clause 16 of the will of the late Herbert Coplin Cox in the following terms

> SUBJECT as hereinbefore provided, and with respect to the balance of my residuary estate which may remain in my Trustees' possession, my said Trustees shall hold the same upon trust as follows :
>
> TO PAY the income thereof in perpetuity for charitable purposes only ; the persons to benefit directly in pursuance of such charitable purposes are to be only such as shall be or shall have been employees of The Canada Life Assurance Company and/or the dependents of such employees of said The Canada Life Assurance Company ; subject to

the foregoing restrictions, the application of such income, including the amounts to be expended and the persons to benefit therefrom, shall be determined by the Board of Directors of the said The Canada Life Assurance Company, as they, the said Board of Directors, in their absolute discretion shall from time to time decide. The Trust Fund is to be known as ' The Cox Foundation ' in memory of the family whose name has been so long associated with the said Company."

In the Supreme Court of Ontario.

No. 6. Formal Judgment. 27th January 1950—*continued.*

is a valid charitable bequest for the relief of poverty and doth order and adjudge the same accordingly.

5.—And This Court Doth Further Declare that by reason of the answer herein given to part (a) of question number (1) no answer to part (b) of question number (1) is required and doth order and adjudge the same accordingly.

6.—And This Court Doth Order that this motion with respect to questions numbered (2) and (3) be and it is hereby adjourned sine die.

7.—And This Court Doth Further Order that the costs of the proceedings herein of all parties represented by counsel on this motion up to and including this Judgment and the issue thereof be taxed and be paid by the Administrators with the Will Annexed and Trustees of the Last Will and Testament and codicil of the said Herbert Coplin Cox, deceased, out of his estate forthwith after taxation thereof, those of the said Administrators as between solicitor and client.

Judgment signed this 13th day of March, 1950.

" H. B. PALEN,"
Assistant Registrar, S.C.O.

Entered : J.B. 104, pages 101–103,
March 14th, 1950.
" H. R."

No. 7.

Notice of Appeal.

In the Supreme Court of Ontario, Court of Appeal.

No. 7. Notice of Appeal. 31st January 1950.

In the Supreme Court of Ontario,

In the Matter of the Estate of Herbert Coplin Cox, late of the Town of Oakville, in the County of Halton, in the Province of Ontario ;

In the Matter of The Trustee Act, R.S.O. Ch. 165, Sec. 59 ;

And in the Matter of The Judicature Act, R.S.O. Ch. 100, Sec. 106, and Rule 600 of the Rules of Practice and Procedure passed pursuant thereto.

In the Supreme Court of Ontario, Court of Appeal.

No. 7. Notice of Appeal. 31st January 1950— *continued.*

TAKE NOTICE that Margaret Jane Ardagh appeals to the Court of Appeal from the judgment of The Honourable Mr. Justice Wells dated the 27th day of January, 1950, and asks that the said judgment be set aside and that judgment be entered declaring that the trust in question in these proceedings be declared to be invalid and that there is an intestacy as to the funds comprising the said trust and declaring what persons are entitled to take the same and that all necessary enquiries be had and directions given for that purpose, upon the following grounds :

(1) the learned Judge erred in holding that the said trust was a valid charitable trust ;

(2) the learned Judge should have held that the said trust could not be found to be charitable under any of the recognized heads of charitable trusts but was in fact not a charitable trust and that accordingly there was an intestacy with respect to the funds comprising the same.

DATED this 31st day of January, 1950.

GRAHAM, GRAHAM & BOWYER,
Brampton, Ontario,
Solicitors for Margaret Jane Ardagh
by their agents herein
MASON FOULDS ARNUP WALTER & WEIR,
372 Bay Street, Toronto.

TO :
Messrs. McCarthy & McCarthy,
Canada Life Building, Toronto,
Solicitors for the Administrators with the will annexed of the last Will and Testament of the said deceased.

AND TO :
The Hon. S. A. Hayden, K.C.
Canada Life Building, Toronto,
Solicitor for the executors of Louise Bogart Cox.

AND TO :
J. J. Robinette, K.C.,
Canada Life Building, Toronto,
Counsel for the Board of Directors of The Canada Life Assurance Company and for the employees of The Canada Life Assurance Company.

AND TO :
Messrs. Blake, Anglin, Osler & Cassels,
25 King Street West, Toronto,
Solicitors for Miss Louise Shepard.

AND TO :
D. L. McCarthy, K.C.,
50 King Street West, Toronto,
Solicitor for Alfred H. Cox personally.

AND TO :
Messrs. Cox. Evans & Noble,
44 Victoria Street, Toronto,
Solicitors for Douglas Cox Ames.

AND TO :
Messrs. McLaughlin, Macaulay, May & Soward,
302 Bay Street, Toronto,
Solicitors for Dr. William Burt Shepard.

AND TO :
The Official Guardian,
Osgoode Hall, Toronto.

AND TO :
The Public Trustee,
Osgoode Hall, Toronto.

No. 8.

Notice of Variation.

IN THE SUPREME COURT OF ONTARIO.

IN THE MATTER of the Estate of HERBERT COPLIN COX, late of the Town of Oakville, in the County of Halton, in the Province of Ontario ;

IN THE MATTER OF The Trustee Act, R.S.O. Ch. 165, Sec. 59 ;

AND IN THE MATTER OF The Judicature Act, R.S.O. Ch. 100, Sec. 106, and Rule 600 of the Rules of Practice and Procedure passed pursuant thereto.

TAKE NOTICE that upon the hearing of the appeal of Margaret Jane Ardagh herein under the Notice of Appeal dated the 31st day of January, 1950, from the judgment of The Honourable Mr. Justice Wells dated the 27th day of January, 1950, the Public Trustee intends to contend that the decision appealed against should be varied by declaring that the bequest made by each Testator is a valid charitable bequest and is not restricted to the relief of poverty.

In the Supreme Court of Ontario, Court of Appeal.

No. 8. Notice of Variation, 4th February 1950— *continued.*

AND TAKE NOTICE that the Public Trustee will not so contend unless the appeal of the said Margaret Jane Ardagh is proceeded with.

DATED this 4th day of February, 1950.

Public Trustee,
Osgoode Hall,
Toronto, Canada.

TO :

Messrs. McCarthy & McCarthy,
Canada Life Building, Toronto,
Solicitors for the Administrators with the will annexed of the last Will and Testament of the said deceased.

AND TO :

The Hon. S. A. Hayden, K.C.,
Canada Life Building, Toronto,
Solicitor for the executors of Louise Bogart Cox.

AND TO :

J. J. Robinette, K.C.,
Canada Life Building, Toronto,
Counsel for the Board of Directors of The Canada Life Assurance Company and for the employees of The Canada Life Assurance Company.

AND TO :

Messrs. Blake, Anglin, Osler & Cassels,
25 King Street West, Toronto,
Solicitors for Miss Louise Shepard.

AND TO :

D. L. McCarthy, K.C.,
50 King Street West, Toronto.
Solicitor for Alfred H. Cox personally.

AND TO :

Messrs. Cox, Evans & Noble,
44 Victoria Street, Toronto,
Solicitors for Douglas Cox Ames.

AND TO :

Messrs. McLaughlin, Macaulay, May & Soward,
302 Bay Street, Toronto,
Solicitors for Dr. William Burt Shepard.

AND TO :

The Official Guardian,
Osgoode Hall, Toronto,

AND TO :

Messrs. Graham, Graham & Bowyer,
Brampton, Ontario,
Solicitors for Margaret Jane Ardagh.

No. 9.

Affidavit of John William Blain.

In the Supreme Court of Ontario, Court of Appeal.

No. 9. Affidavit of John William Blain. 13th March 1950.

IN THE SUPREME COURT OF ONTARIO.

IN THE MATTER OF the Estate of HERBERT COPLIN COX, late of the Town of Oakville, in the County of Halton, in the Province of Ontario ;

IN THE MATTER OF The Trustee Act, R.S.O. Ch. 165, Sec. 59 ;

AND IN THE MATTER OF The Judicature Act, R.S.O. Ch. 100, Sec. 106, and Rule 600 of the Rules of Practice and Procedure passed pursuant thereto.

I, JOHN WILLIAM BLAIN, of the City of Toronto, in the County of York, Solicitor, MAKE OATH AND SAY :

1.—THAT I have inspected the book maintained by The Canada Life Assurance Company wherein are recorded the minutes and proceedings of meetings of directors and shareholders of The Canada Life Assurance Company.

2.—THAT according to information contained in the said book, the following persons were the directors of The Canada Life Assurance Company on April 28th, 1949, and on May 12th, 1949 :

Policyholders' Directors

E. G. Baker
R. C. H. Cassels
E. C. Gill
The Right Honourable Sir Thomas White
James V. Young

Shareholders' Directors

The Honourable Leighton McCarthy
A. E. Arscott
Arthur V. Davis
H. L. Enman
W. J. Hastie
R. A. Laidlaw
A. N. Mitchell
John L. McCarthy
John Stuart
J. D. Woods

SWORN before me at the City of Toronto, in the County of York, this 13th day of March, 1950.

" J. W. BLAIN."

" JOHN W. BROOKE,"
A Commissioner, etc.

In the Supreme Court of Ontario, Court of Appeal.

No. 10.

Order.

$2.80 Law Stamps Cancelled

No. 10. Order. 16th February 1951.

IN THE SUPREME COURT OF ONTARIO.

The Honourable Mr. Justice ROACH.
The Honourable Mr. Justice AYLESWORTH.
The Honourable Mr. Justice BOWLBY.

Friday, the 16th day of February, 1951.

IN THE MATTER OF the Estate of HERBERT COPLIN COX, late of the Town of Oakville, in the County of Halton, in the Province of Ontario ;

IN THE MATTER OF The Trustee Act, R.S.O., Ch. 165, Sec. 59 ;

AND IN THE MATTER OF The Judicature Act, R.S.O., Ch. 100, Sec. 106, and Rule 600 of the Rules of Practice and Procedure passed pursuant thereto.

UPON motion made unto this Court on the 8th and 9th days of May, 1950, by counsel on behalf of Margaret Jane Ardagh, one of the next-of-kin of Herbert Coplin Cox, and (by order of the Court) for all the other next-of-kin in the same interest as the said Margaret Jane Ardagh not specifically mentioned in the last Will and Testament and Codicil of the said Herbert Coplin Cox and not served with notice of the motion before The Honourable Mr. Justice Wells hereinafter referred to, by way of appeal from and to set aside the judgment of The Honourable Mr. Justice Wells herein dated the 27th day of January, 1950, in presence of counsel for National Trust Company Limited surviving administrator with the will annexed and trustee of the last Will and Testament and Codicil of the above-named Herbert Coplin Cox, deceased, and for National Trust Company Limited surviving executor and trustee of the last Will and Testament of Louise Bogart Cox, deceased, and for the Board of Directors of The Canada Life Assurance Company, and Edwin G. Baker (appointed by order of the Court to represent the employees of The Canada Life Assurance Company), and for William Burt Shepard, and for the Official Guardian on behalf of George Stewart Ames and Bruce Coleman Ames and (by order of the Court) any unascertained persons who may be interested in the residue of the said estate in the event of an intestacy thereof and not represented by the said Margaret Jane Ardagh, and for the Public Trustee who has intervened under the provisions of Section 6, sub-section 5 of The Charities Accounting Act and (by order of the Court) representing persons other than employees of The Canada Life Assurance Company who may benefit under the bequest

provided in Clause 16 of the last Will and Testament of the said Herbert Coplin Cox, no one appearing on behalf of Louise Shepard, Alfred H. Cox in his personal capacity and Douglas Cox Ames although duly served with notice of the said appeal, upon hearing read the affidavits of John G. Hungerford, Clifford McCarthy (2), Edwin G. Baker and John William Blain, filed, and the exhibits therein referred to, the said judgment of The Honourable Mr. Justice Wells dated the 27th day of January, 1950, and the reasons therefor, and upon hearing what was alleged by counsel aforesaid, and counsel aforesaid agreeing that in the event this Court should be of opinion that the bequest hereinafter set forth is not a valid charitable bequest, it should be referred to the Master at Toronto to determine and report the next-of-kin of the said Herbert Coplin Cox, deceased, and judgment upon the said appeal having been reserved until this day,—

1.—THIS COURT DOTH ORDER that the said appeal be and the same is hereby allowed and the said judgment be and the same is hereby varied by striking out paragraphs 4 and 5 thereof and substituting the following :

" 4. AND THIS COURT DOTH DECLARE in answer to part (a) of question number (1) that Clause 16 of the will of the said Herbert Coplin Cox in the following terms

' SUBJECT as hereinbefore provided, and with respect to the balance of my residuary estate which may remain in my Trustees' possession, my said Trustees shall hold the same upon trust as follows :

TO PAY the income thereof in perpetuity for charitable purposes only ; the persons to benefit directly in pursuance of such charitable purposes are to be only such as shall be or shall have been employees of The Canada Life Assurance Company and/or the dependents of such employees of said The Canada Life Assurance Company ; subject to the foregoing restrictions, the application of such income including the amounts to be expended and the persons to benefit therefrom shall be determined by the Board of Directors of the said The Canada Life Assurance Company, as they, the said Board of Directors, in their absolute discretion shall from time to time decide. The Trust Fund is to be known as " The Cox Foundation " in memory of the family whose name has been so long associated with the said Company.'

does not constitute a valid charitable bequest and is therefore void as offending the rule against perpetuities AND DOTH ORDER AND ADJUDGE THE SAME ACCORDINGLY.

5. AND THIS COURT DOTH FURTHER ORDER that it be referred to the Master of this Court at Toronto to determine and report the next-of-kin of the said Herbert Coplin Cox, deceased."

In the Supreme Court of Ontario, Court of Appeal.

No. 10. Order. 16th February 1951—*continued.*

2.—AND THIS COURT DOTH FURTHER ORDER that the costs of all parties appearing on the said appeal be taxed, those of the said surviving administrator with the will annexed and trustee of the last Will and Testament and Codicil of the said Herbert Coplin Cox, deceased, as between solicitor and client, and be paid by the said administrator out of the said estate forthwith after taxation.

Entered : O.B. 211, Pages 348–349.
April 19, 1951.
" G. H."

" CHAS. W. SMYTH,"
Registrar, S.C.O.

No. 11. Order of The Honourable Mr. Justice Laidlaw as to security for costs. 30th March 1951.

No. 11.

Order of The Honourable Mr. Justice Laidlaw as to security for costs.

(Law Stamps $1.50)

IN THE SUPREME COURT OF ONTARIO.

The Honourable Mr. Justice LAIDLAW In Chambers.

" C.W.S." Friday, the 30th day of March, 1951.

IN THE MATTER OF the Estate of HERBERT COPLIN COX, late of the Town of Oakville, in the County of Halton, in the Province of Ontario ;

IN THE MATTER OF The Trustee Act, R.S.O. Ch. 165, Sec. 59 ;

AND IN THE MATTER OF The Judicature Act, R.S.O. Ch. 100, Sec. 106, and Rule 600 of the Rules of Practice and Procedure passed pursuant thereto.

(SEAL)

UPON the application by counsel on behalf of Edwin G. Baker, one of the persons who comprise the Board of Directors of The Canada Life Assurance Company, appointed by order of the Court to represent the employees of The Canada Life Assurance Company, and upon hearing read the certificate of The Canadian Bank of Commerce showing the payment into Court of $500.00 by the said Edwin G. Baker, and in the presence of counsel for National Trust Company, Limited, surviving Administrator

In the Supreme Court of Ontario, Court of Appeal.

No. 11. Order of The Honourable Mr. Justice Laidlaw as to security for costs. 30th March 1951—*continued.*

with the Will Annexed and Trustee of the last Will and Testament and Codicil of the said Herbert Coplin Cox, and for National Trust Company, Limited, surviving Executor of the last Will and Testament of Louise Bogart Cox, deceased, and for the Board of Directors of The Canada Life Assurance Company, and for Margaret Jane Ardagh, one of the next-of-kin of the late Herbert Coplin Cox, and appointed by order of the Court to represent all the other next-of-kin in the same interest as the said Margaret Jane Ardagh not specifically mentioned in the last Will and Testament and Codicil of the said Herbert Coplin Cox and not served with notice of the motion in this matter before The Honourable Mr. Justice Wells, and for William B. Shepard, and for the Official Guardian on behalf of George Stewart Ames and Bruce Coleman Ames, infants, and appointed by order of the Court to represent any unascertained persons who may be interested in the residue of the said estate in the event of an intestacy thereof and not represented by the said Margaret Jane Ardagh, and for the Public Trustee who has intervened under the provisions of Section 6, subsection 5, of The Charities Accounting Act, and appointed by order of the Court to represent persons other than employees of The Canada Life Assurance Company who may benefit under the bequest provided in Clause 16 of the last Will and Testament of the said Herbert Coplin Cox, and upon hearing what was alleged by counsel aforesaid,

1.—IT IS ORDERED that the sum of $500.00 paid into Court as security that the said Edwin G. Baker will effectually prosecute his appeal from the order of the Court of Appeal for Ontario dated the 16th day of February, 1951, and will pay such costs as may be awarded against him by the Supreme Court of Canada, be and the same is hereby allowed as good and sufficient security.

2.—AND IT IS FURTHER ORDERED that the costs of this application be costs in the said appeal to be taxed by the Taxing Officer at Toronto.

Entered O.B. 212, Page 285,
March 31, 1951.
G. H.

" CHAS. W. SMYTH,"
Registrar, S.C.O.

In the Supreme Court of Canada.

No. 12.

Formal Judgment.

No. 12. Formal Judgment. 22nd December 1952.

IN THE SUPREME COURT OF CANADA.

Monday, the 22nd day of December, 1952.

Before :

The Honourable Mr. Justice KERWIN
The Honourable Mr. Justice TASCHEREAU
The Honourable Mr. Justice RAND
The Honourable Mr. Justice KELLOCK
The Honourable Mr. Justice ESTEY
The Honourable Mr. Justice CARTWRIGHT
The Honourable Mr. Justice FAUTEUX

IN THE MATTER OF the Estate of HERBERT COPLIN COX, late of the Town of Oakville, in the County of Halton, in the Province of Ontario ;

IN THE MATTER OF The Trustee Act, R.S.O. Ch. 165, Sec. 59 ; and

IN THE MATTER OF The Judicature Act, R.S.O. Ch. 100, Sec. 106, and Rule 600 of the Rules of Practice and Procedure passed pursuant thereto.

Between

EDWIN G. BAKER (appointed by order of The Honourable Mr. Justice Wells to represent the employees of The Canada Life Assurance Company) ... ... *Appellant*

and

NATIONAL TRUST COMPANY, LIMITED, surviving Administrator with the Will Annexed and Trustee of the Last Will and Testament and Codicil of Herbert Coplin Cox, deceased, NATIONAL TRUST COMPANY, LIMITED, surviving Executor of the Last Will and Testament of Louise Bogart Cox, deceased, THE BOARD OF DIRECTORS OF THE CANADA LIFE ASSURANCE COMPANY, MARGARET JANE ARDAGH, WILLIAM BURT SHEPARD, THE OFFICIAL GUARDIAN OF THE PROVINCE OF ONTARIO AND THE PUBLIC TRUSTEE OF THE PROVINCE OF ONTARIO ... ... *Respondent.*

The appeal of the above named Appellant from the judgment of the Court of Appeal for the Province of Ontario pronounced in the above cause on the 16th day of February in the year of Our Lord one thousand, nine hundred and fifty-one, varying the judgment of Mr. Justice Wells of the Supreme Court of Ontario rendered in the said cause on the 27th day of

In the Supreme Court of Canada.

No. 12. Formal Judgment. 22nd December 1952— *continued.*

January in the year of Our Lord one thousand, nine hundred and fifty, having come on to be heard on the 12th, 13th, and 14th days of May, in the year of Our Lord one thousand, nine hundred and fifty-two, in the presence of counsel as well for the Appellant as the Respondents, whereupon and upon hearing what was alleged by counsel aforesaid, this Court was pleased to direct that the said appeal should stand over for judgment, and the same coming on this day for judgment, THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for Ontario should be, and the same was affirmed, subject to a variation whereby paragraph five of the said judgment of Mr. Justice Wells as inserted in the said Court of Appeal judgment, shall be stricken out and the following substituted therefor :

> "5. And there therefore being an intestacy as to such balance of the Testator's residuary estate, THIS COURT DOTH FURTHER ORDER that it be referred to the Master of this Court at Toronto, to determine and report who were entitled thereto at date of the death of the Testator."

and that otherwise the said appeal should be and the same was dismissed.

AND THIS COURT DID FURTHER ORDER AND ADJUDGE that the costs of all parties to this appeal shall be taxed, those of the surviving Administrator with the Will Annexed and Trustee of the Testator's Will and Codicil as between Solicitor and Client, and should be paid by the said Administrator out of the said estate forthwith after taxation.

PAUL LEDUC,
Registrar.

LOUISE BOGART COX, deceased.

In the Supreme Court of Ontario.

No. 13.

Originating Notice of Motion.

No. 13. Originating Notice of Motion. — March 1949.

IN THE SUPREME COURT OF ONTARIO.

IN THE MATTER OF the Estate of LOUISE BOGART COX, late of the Town of Oakville, in the County of Halton, in the Province of Ontario.

IN THE MATTER OF The Trustee Act, R.S.O., Ch. 165, Sec. 59 ;

AND IN THE MATTER OF The Judicature Act, R.S.O., Ch. 100, Sec. 106, and Rule 600 of the Rules of Practice and Procedure passed pursuant thereto.

TAKE NOTICE that, by Special Leave, a motion will be made before the Honourable Mr. Justice Wells in Court at Osgoode Hall, in the City

In the Supreme Court of Ontario.

No. 13. Originating Notice of Motion. — March 1949— *continued.*

of Toronto, on Thursday the 28th day of April, 1949, at the hour of 11 o'clock in the forenoon or so soon thereafter as the motion can be heard on behalf of National Trust Company Limited and Alfred Herbert Cox, Executors and Trustees of the Last Will and Testament of Louise Bogart Cox, deceased, to determine :

(1) (a) Whether or not the bequest provided for in Clause 3 (F) of the Will of the late Louise Bogart Cox in the following terms :

" (F) to hold all the rest, residue and remainder of my estate upon trust, as follows :

(a) To use so much of the income and/or capital thereof as may be necessary for the upkeep and maintenance of the properties described in Paragraph 3-(D) hereof.

(b) To pay the income thereof, subject to (a) hereof, in perpetuity for charitable purposes only ; the persons to benefit directly in pursuance of such charitable purposes are to be only such as shall be or shall have been employees of The Canada Life Assurance Company and/or the dependents of such employees of said The Canada Life Assurance Company ; subject to the foregoing restrictions, the application of such income, including the amounts to be expended and the persons to benefit therefrom, shall be determined by the Board of Directors of the said The Canada Life Assurance Company, as they, the said Board of Directors, in their absolute discretion shall from time to time decide. The Trust Fund is to be known as ' The Cox Foundation ' in memory of the family whose name has been so long associated with the said Company."

is a valid charitable bequest.

(b) In the event of the bequest to " The Cox Foundation " as set out in (1) (a) (F) (b) above being held to be an invalid charitable bequest, what disposition is to be made of the residuary estate and what persons, if any, are to take, and in what proportions ?

(2) In the event of the said bequest to " The Cox Foundation " being held to be a valid charitable bequest, for the opinion, advice or direction of the Court upon the following questions :

(a) Must the Executors pay out of the estate succession duties computed in accordance with the relevant provisions of the Dominion Succession Duty Act, 1940, as amended, and the Ontario Succession Duty Act, 1939, as amended, if the aforesaid bequest is assessed otherwise than to a " charitable organization " as provided in Section 7 (1) (d) of the Dominion Succession Duty Act and Section 4 (1) of the Ontario Succession Duty Act.

(b) If the answer to 2 (a) is " no " must the executors pay out of the estate of the deceased duties computed in accordance with the relevant provisions of the Ontario Succession Duty Act if the Treasurer

of Ontario determines otherwise under the provisions of Section 4 (2) of the Ontario Succession Duty Act, 1939, as amended ?

(c) Must the Trustees pay an income tax computed in accordance with the relevant provisions of the Income Tax Act (1948, Canada) if assessed in respect of income and otherwise than an organization operated exclusively for charitable purposes within the meaning of Section 57, ss. (e) of the Income Tax Act (1948, Canada) ?

In the Supreme Court of Ontario.

No. 13. Originating Notice of Motion. — March 1949— *continued.*

AND TAKE NOTICE that in support of the said motion will be read the affidavit of John G. Hungerford filed with Exhibits therein referred to, and such further and other material as counsel may advise.

DATED at Toronto, this day of March, A.D. 1949.

FRANK McCARTHY,
Canada Life Building,
Toronto,
Solicitor for the Executors.

To :
William Burt Shepard, Providence, Rhode Island.
Louise L. Shepard, Pasadena, California.
Percy D. Wilson, Esq., K.C., Official Guardian.
Armand Racine, Esq., K.C., Public Trustee for the Province of Ontario, Toronto.
The Board of Directors, The Canada Life Assurance Company, Toronto, Ontario.
The Honourable the Treasurer of Ontario, Toronto, Ontario.
The Honourable the Minister of National Revenue, Ottawa, Ont.

No. 14.

Affidavit of John G. Hungerford.

No. 14. Affidavit of John G. Hungerford. 21st March 1949.

IN THE SUPREME COURT OF ONTARIO.

IN THE MATTER OF the Estate of LOUISE BOGART COX, late of the Town of Oakville, in the County of Halton, in the Province of Ontario.

IN THE MATTER OF The Trustee Act, R.S.O., Ch. 165, Sec. 59 ;

AND IN THE MATTER OF The Judicature Act, R.S.O., Ch. 100, Sec. 106, and Rule 600 of the Rules of Practice and Procedure passed pursuant thereto.

I, JOHN G. HUNGERFORD, of the City of Toronto, in the County of York, Assistant General Manager, make oath and say :

In the Supreme Court of Ontario.

No. 14. Affidavit of John G. Hungerford. 21st March 1949—*continued.*

1.—That I am an Assistant General Manager of the National Trust Company Limited.

2.—That now shown to me and marked Exhibit " A " to this my affidavit is a notarial copy of the last Will and Testament of Louise Bogart Cox, who died on the 18th day of November, 1948. Letters Probate was granted by the Surrogate Court of the County of Halton on the 22nd day of February, 1949, to National Trust Company Limited and Alfred Herbert Cox of the City of Toronto, in the County of York.

3.—That certain questions have been raised as to the validity of the bequest in Clause 3 (F) (b) of the said Will and depending on whether or not the bequest is valid certain questions as to the liability to and the amounts of Succession Duties payable by the Executors arise and likewise certain questions as to the liability to income tax payable by the Trustees, and in the event of the said bequest being held to be invalid questions arise as to the disposition to be made of the residuary estate.

4.—That the relevant provisions of the said Will to the questions raised are in Clause 3 (B) to be found on the first page of Exhibit " A "—

> " (B) To pay my just debts, funeral and testamentary expenses, and also all Succession Duties and Inheritance and Death Taxes that may be payable by any beneficiary of this my Will or any Codicil hereto, in connection with any gift or benefit given by me to any said beneficiary, either in my lifetime or by survivorship, or by this my Will or any Codicil hereto, and whether such Duties and Taxes are payable in respect of assets or interests which fall into possession at my death or at any subsequent time, and I hereby authorize my Trustees to commute the Duty or Tax on any interest in expectancy. Any Duties or Taxes so paid shall be treated as an ordinary debt of my estate."

and in Clause 3 (F) (b) to be found on page 5 of Exhibit " A "—

> " 3 (F) (b) To pay the income thereof, subject to (a) hereof, in perpetuity for charitable purposes only ; the persons to benefit directly in pursuance of such charitable purposes are to be only such as shall be or shall have been employees of The Canada Life Assurance Company and/or the dependents of such employees of said The Canada Life Assurance Company ; subject to the foregoing restrictions, the application of such income, including the amounts to be expended and the persons to benefit therefrom, shall be determined by the Board of Directors of the said The Canada Life Assurance Company, as they, the said Board of Directors, in their absolute discretion shall from time to time decide. The Trust Fund is to be known as ' The Cox Foundation ' in memory of the family whose name has been so long associated with the said Company."

5.—That on information known to me and furnished by Miss L. Louise Shepard of Pasadena, California, Dr. William Burt Shepard of Providence,

Rhode Island, and Mrs. Donald Macintosh, of Toronto, a niece by marriage of one Charles Brown, Jr., it would appear :

(a) That Louise Bogart Cox died, a widow, on the 18th day of November, 1948, leaving no children, and Letters Probate of her last will was granted to National Trust Company Limited and Alfred Herbert Cox on the 22nd day of February, 1949.

(b) That Louise Bogart Cox was a daughter of Theodore Bogart of Penn Yan, N.Y., and his wife, Mary Ann Brown, both of whom pre-deceased the said Louise Bogart Cox. The said Louise Bogart Cox had no brothers and one sister, Josephine Bogart, who died unmarried in 1918.

(c) That the said Theodore Bogart as of the date of the death of the said Louise Bogart Cox had, so far as I can ascertain, no living brothers or sisters, and whether or not any children of such brothers or sisters were living as at the same date likewise I have been unable to ascertain.

(d) That the said Mary Ann Brown, the mother of Louise Bogart Cox, was the daughter of Gilbert Brown who predeceased the said Louise Bogart Cox, leaving him surviving, in addition to the said Mary Ann Brown,

(1) Eliza, who married Ira Murdock and lived at Penn Yan, N.Y., and who predeceased the said Louise Bogart Cox leaving no descendants.

(2) Henry Brown who predeceased the said Louise Bogart Cox leaving one child, Lida Brown, who married William P. Shepard and who died in Pasadena, California, on June 2nd, 1944, leaving two children, Lida Louise Shepard now living in Pasadena, California, and William Burt Shepard now living in Providence, Rhode Island.

(3) Charles Brown, Sr., who predeceased the said Louise Bogart Cox and who lived at 42 Isabella Street, Toronto. He had two children, Hattie Brown, who married Edward Cox of Toronto, both of whom predeceased Louise Bogart Cox leaving no children, and Charles Brown, Jr., of 42 Isabella Street, Toronto, who married Daisy Logan, both of whom predeceased Louise Bogart Cox leaving no children.

6.—That now shown to me and marked Exhibit " B " is a chart indicating how, I am advised, the degree of consanguinity of the known next of kin are computed and how the residue, in the event of an intestacy, should be distributed equally per capita among all of the next of kin related in the fifth degree alive at the date of the death of Louise Bogart Cox and who are, I am advised and verily believe on the information obtained up to this

In the Supreme Court of Ontario.

time Lida Louise Shepard, 771 East California Street, Pasadena, 5, California and Dr. William Burt Shepard, 911 Industrial Trust Building, Providence, 3, Rhode Island.

No. 14. Affidavit of John G. Hungerford. 21st March 1949—*continued.*

SWORN BEFORE ME, at the City of Toronto, in the County of York, this 21st day of March, A.D. 1949. } "J. G. HUNGERFORD."

"H. T. WHITE,"
A Commissioner, etc.

No. 15. Affidavit of Clifford McCarthy. 26th April 1949.

No. 15.

Affidavit of Clifford McCarthy.

IN THE SUPREME COURT OF ONTARIO.

IN THE MATTER OF the Estate of LOUISE BOGART COX, late of the Town of Oakville, in the County of Halton, in the Province of Ontario.

IN THE MATTER OF The Trustee Act, R.S.O., Ch. 165, Sec. 59;

AND IN THE MATTER OF The Judicature Act, R.S.O., Ch. 100, Sec. 106, and Rule 600 of the Rules of Practice and Procedure passed pursuant thereto.

I, CLIFFORD McCARTHY, of the City of Toronto, in the County of York, Manager, make oath and say:

1.—THAT I am Personnel Manager of The Canada Life Assurance Company, and have knowledge of the matters to which I herein depose.

2.—THAT I have been advised that the late Louise Bogart Cox in her last Will and Testament in Clause 3 (F) provided:

"(F) to hold all the rest, residue and remainder of my estate upon trust, as follows:

(a) To use so much of the income and/or capital thereof as may be necessary for the upkeep and maintenance of the properties described in Paragraph 3 (D) hereof.

(b) To pay the income thereof, subject to (a) hereof, in perpetuity for charitable purposes only; the persons to benefit directly in pursuance of such charitable purposes are to be only such as shall be or shall have been employees of The Canada Life Assurance Company

and/or the dependents of such employees of said The Canada Life Assurance Company; subject to the foregoing restrictions, the application of such income, including the amounts to be expended and the persons to benefit therefrom, shall be determined by the Board of Directors of the said The Canada Life Assurance Company, as they, the said Board of Directors, in their absolute discretion shall from time to time decide. The Trust Fund is to be known as ' The Cox Foundation ' in memory of the family whose name has been so long associated with the said Company."

3.—THAT the persons who might benefit under Clause 3 (F) of the said will, as being only such as shall be or shall have been employees of The Canada Life Assurance Company, number as of this date, approximately

	Ontario	Balance of Canada	United States	B.I.D.	Total
Present Executives, Managers Office and other Staff ...	854	144	52	168	1,218
Present Sales Organization ...	229	174	142	125	670
TOTAL	1,083	318	194	293	1,888
Former Executive Managers, Office and other Staff ...	3,451	947	441	698	5,537
Former Sales Organization ...	1,423	2,379	1,783	2,434	8,039
GRAND TOTAL	5,957	3,644	2,418	3,445	15,464

4.—That the persons who might benefit under Clause 16 of the said will as being dependants of such employees, on the basis of a normal average of dependants, might increase the number in each class two-fold, in which event the result produced would be:

	Ontario	Balance of Canada	United States	B.I.D.	Total
GRAND TOTAL	11,914	7,288	4,836	6,890	30,928

5.—That the number of former executives, managers, office and other staff and former sales organization is a minimum number, as the Company's records in this respect only go back to the year 1924.

6.—That The Canada Life Assurance Company operates in Canada at a Head Office located in the City of Toronto in the Province of Ontario, and as well, maintains branch offices in all other nine provinces. The Canada Life Assurance Company in addition has its chief office for the United Kingdom in London, England, and as well, maintains offices at Belfast, Northern Ireland, Hamilton, Bermuda, and Dublin, Ireland. The Canada Life Assurance Company also maintains offices in the following

In the Supreme Court of Ontario.

No. 15. Affidavit of Clifford McCarthy. 26th April 1949—*continued.*

states of the United States of America, namely: New Jersey, New York, Pennsylvania, Ohio, Michigan, Illinois, California, Oregon, Minnesota and Washington, and did, but does not now, maintain offices in Alabama, Florida and Texas. The Canada Life Assurance Company also maintains an office in Honolulu, Hawaiian Islands.

SWORN before me at the City of Toronto, in the County of York, this 26th day of April, 1949. } "J. C. McCARTHY."

"J. F. H. McCARTHY,"
A Comissioner, etc.

No. 16. Formal Judgment. 27th January 1950.

No. 16.

Formal Judgment.

IN THE SUPREME COURT OF ONTARIO.

The Honourable Mr. Justice WELLS.

Friday, the 27th day of January, 1950.

IN THE MATTER OF the Estate of LOUISE BOGART COX, late of the Town of Oakville, in the County of Halton, in the Province of Ontario;

IN THE MATTER OF The Trustee Act, R.S.O., Ch. 165, Sec. 59;

AND IN THE MATTER OF The Judicature Act, R.S.O., Ch. 100, Sec. 106, and Rule 600 of the Rules of Practice and Procedure passed pursuant thereto.

(SEAL)

UPON MOTION made unto this Court on the 28th day of April, 1949, and the 12th day of May, 1949, by counsel on behalf of National Trust Company Limited and Alfred Herbert Cox, Executors and Trustees of the Last Will and Testament of Louise Bogart Cox, deceased, for Judgment to determine the following questions respecting the administration of the estate of the said Louise Bogart Cox, namely:

(1) (a) Whether or not the bequest provided for in Clause 3 (F) of the Will of the late Louise Bogart Cox in the following terms:

"(F) to hold all the rest, residue and remainder of my estate upon trust, as follows:

(a) To use so much of the income and/or capital thereof as may be necessary for the upkeep and maintenance of the properties described in Paragraph 3 (D) hereof.

(b) To pay the income thereof, subject to (a) hereof, in perpetuity for charitable purposes only; the persons to benefit directly in pursuance of such charitable purposes are to be only such as shall be or shall have been employees of The Canada Life Assurance Company and/or the dependents of such employees of said The Canada Life Assurance Company; subject to the foregoing restrictions, the application of such income, including the amounts to be expended and the persons to benefit therefrom, shall be determined by the Board of Directors of the said The Canada Life Assurance Company, as they, the said Board of Directors, in their absolute discretion shall from time to time decide. The Trust Fund is to be known as ' The Cox Foundation ' in memory of the family whose name has been so long associated with the said Company."

is a valid charitable bequest.

(b) In the event of the bequest to " The Cox Foundation " as set out in (1) (a) (F) (b) above being held to be an invalid charitable bequest, what disposition is to be made of the residuary estate and what persons, if any, are to take, and in what proportions ?

(2) In the event of the said bequest to " The Cox Foundation " being held to be a valid charitable bequest for the opinion, advice or direction of the Court upon the following questions :

(a) Must the Executors pay out of the estate succession duties computed in accordance with the relevant provisions of the Dominion Succession Duty Act, 1940, as amended, and the Ontario Succession Duty Act, 1939, as amended, if the aforesaid bequest is assessed otherwise than to a " charitable organization " as provided in Section 7 (1) (d) of the Dominion Succession Duty Act and Section 4 (1) of the Ontario Succession Duty Act.

(b) If the answer to 2 (a) is " no " must the executors pay out of the estate of the deceased duties computed in accordance with the relevant provisions of the Ontario Succession Duty Act if the Treasurer of Ontario determines otherwise under the provisions of Section 4 (2) of the Ontario Succession Duty Act, 1939, as amended ?

(c) Must the Trustees pay an income tax computed in accordance with the relevant provisions of the Income Tax Act (1948, Canada) if assessed in respect of income and otherwise than an organization operated exclusively for charitable purposes within the meaning of Section 57, ss. (e) of the Income Tax Act (1948, Canada) ?

in the presence of counsel for those persons who comprise the Board of Directors of The Canada Life Assurance Company, as set out in the affidavit of John William Blain, filed, counsel for Louise L. Shepard, counsel for

In the Supreme Court of Ontario.

No. 16. Formal Judgment. 27th January 1950— *continued.*

William B. Shepard counsel for the Public Trustee who has intervened under the provisions of Section 6, subsection 5, of the Charities Accounting Act, R.S.O. 1937, chapter 167, and counsel for the Official Guardian, no one appearing for The Honourable The Treasurer of Ontario or The Honourable the Minister of National Revenue although duly served with notice; upon reading the Order of The Honourable Mr. Justice Wells dated the 19th day of March, 1949, the affidavit of John G. Hungerford, filed, and the Exhibits therein referred to, the affidavit of Clifford McCarthy, filed, and the said affidavit of John William Blain, and upon hearing what was alleged by counsel aforesaid with respect to question number (1) by consent of counsel aforesaid no argument being adduced at this time with respect to question number (2), and this Court having been pleased to direct that the motion should stand over for judgment, and the same coming on this day for judgment,—

1.—THIS COURT DOTH ORDER that Edwin G. Baker, one of the persons who comprise the Board of Directors of The Canada Life Assurance Company, be and he is hereby appointed to represent for the purposes of this motion the employees of The Canada Life Assurance Company, and that the Public Trustee be and he is hereby appointed to represent those other persons, who may benefit under the bequest provided in Clause 3 (F) of the Last Will and Testament of the said Louise Bogart Cox.

2.—AND THIS COURT DOTH FURTHER ORDER that The Official Guardian be and he is hereby appointed to represent for the purposes of this motion any unascertained persons who may be interested in the residue of the said estate in the event of an intestacy thereof.

3.—AND THIS COURT DOTH DECLARE in answer to part (a) of question number (1) that Clause 3 (F) of the will of the late Louise Bogart Cox in the following terms

> " (F) to hold all the rest, residue and remainder of my estate upon trust, as follows:
>
> (a) To use so much of the income and/or capital thereof as may be necessary for the upkeep and maintenance of the properties described in Paragraph 3 (D) hereof.
>
> (b) To pay the income thereof, subject to (a) hereof, in perpetuity for charitable purposes only; the persons to benefit directly in pursuance of such charitable purposes are to be only such as shall be or shall have been employees of The Canada Life Assurance Company and/or the dependents of such employees of the said The Canada Life Assurance Company; subject to the foregoing restrictions, the application of such income including the amounts to be expended and the persons to benefit therefrom, shall be determined by the Board of Directors of the said The Canada Life Assurance Company, as they, the said Board of Directors, in their absolute discretion shall from time

to time decide. The Trust Fund is to be known as 'The Cox Foundation' in memory of the family whose name has been so long associated with the said Company."

In the Supreme Court of Ontario.

No. 16. Formal Judgment. 27th January 1950—*continued.*

is a valid charitable bequest for the relief of poverty and doth order and adjudge the same accordingly.

4.—AND THIS COURT DOTH FURTHER DECLARE that by reason of the answer herein given to part (a) of question number (1) no answer to part (b) of question number (1) is required and doth order and adjudge the same accordingly.

5.—AND THIS COURT DOTH ORDER that this motion with respect to question number (2) be and it is hereby adjourned sine die.

6.—AND THIS COURT DOTH FURTHER ORDER that the costs of the proceedings herein of all parties represented by counsel on this motion up to and including this Judgment and the issue thereof be taxed and be paid by the Executors and Trustees of the Last Will and Testament of the said Louise Bogart Cox, deceased, out of her estate forthwith after taxation thereof, those of the said Executors as between solicitor and client.

JUDGMENT signed this 13th day of March, 1950.

"H. B. PALEN,"
Assistant Registrar, S.C.O.

Entered: J. B. 130, Pages 110–111,
March 13, 1950.
"G. W."

No. 17.

Notice of Variation.

In the Supreme Court of Ontario, Court of Appeal.

No. 17. Notice of Variation. 4th February 1950.

IN THE SUPREME COURT OF ONTARIO.

IN THE MATTER OF the Estate of LOUISE BOGART COX, late of the Town of Oakville, in the County of Halton, in the Province of Ontario.

IN THE MATTER OF The Trustee Act, R.S.O., Ch. 165, Sec. 59;

AND IN THE MATTER OF The Judicature Act, R.S.O., Ch. 100, Sec. 106, and Rule 600 of the Rules of Practice and Procedure passed pursuant thereto.

TAKE NOTICE that upon the hearing of the appeal of Margaret Jane Ardagh herein under the Notice of Appeal dated the 31st day of January, 1950, from the judgment of The Honourable Mr. Justice Wells dated the 27th day of January, 1950, the Public Trustee intends to contend that the decision appealed against should be varied by declaring that the bequest made by each Testator is a valid charitable bequest and is not restricted to the relief of poverty.

In the Supreme Court of Ontario, Court of Appeal.

No. 17. Notice of Variation. 4th February 1950—*continued.*

AND TAKE NOTICE that the Public Trustee will not so contend unless the appeal of the said Margaret Jane Ardagh is proceeded with.

DATED this 4th day of February, 1950.

Public Trustee,
Osgoode Hall,
Toronto, Canada.

TO :

Messrs. McCarthy & McCarthy,
Canada Life Building, Toronto,
Solicitors for the Administrators with the will annexed of the last Will and Testament of the said deceased.

AND TO :

The Hon. S. A. Hayden, K.C.,
Canada Life Building, Toronto,
Solicitor for the executors of Louise Bogart Cox.

AND TO :

J. J. Robinette, K.C.,
Canada Life Building, Toronto,
Counsel for the Board of Directors of The Canada Life Assurance Company and for the employees of The Canada Life Assurance Company.

AND TO :

Messrs. Blake, Anglin, Osler & Cassels,
25 King Street West, Toronto,
Solicitors for Miss Louise Shepard.

AND TO :

D. L. McCarthy, K.C.,
50 King Street West, Toronto,
Solicitor for Alfred H. Cox personally.

AND TO :

Messrs. Cox, Evans & Noble,
44 Victoria Street, Toronto,
Solicitors for Douglas Cox Ames.

AND TO :

Messrs. McLaughlin, Macaulay, May & Soward,
302 Bay Street, Toronto,
Solicitors for Dr. William Burt Shepard.

AND TO :

The Official Guardian,
Osgoode Hall, Toronto.

AND TO :

Messrs. Graham, Graham & Bowyer,
Brampton, Ontario,
Solicitors for Margaret Jane Ardagh.

No. 18.

Notice of Appeal.

In the Supreme Court of Ontario, Court of Appeal.

No. 18. Notice of Appeal. 9th February 1950.

IN THE SUPREME COURT OF ONTARIO.

IN THE MATTER OF the Estate of LOUISE BOGART COX, late of the Town of Oakville, in the County of Halton, in the Province of Ontario.

IN THE MATTER OF The Trustee Act, R.S.O., Ch. 165, Sec. 59 ;

AND IN THE MATTER OF The Judicature Act, R.S.O., Ch. 100, Sec. 106, and Rule 600 of the Rules of Practice and Procedure passed pursuant thereto.

TAKE NOTICE that William Burt Shepard appeals to the Court of Appeal from the Judgment of the Honourable Mr. Justice Wells dated the 27th day of January, 1950, and asks that the said judgment be set aside and that judgment be entered declaring the trust in question in these proceedings to be invalid and that there is an intestacy as to the funds comprising the said trust and declaring what persons are entitled to take the same and that all necessary enquiries be had and directions given for that purpose, on the following grounds—

1.—The learned Judge erred in holding that the said trust was a valid charitable trust ;

2.—The learned Judge erred in holding that the testatrix had a general charitable intent, having regard to the fact that the class to be benefited is not a section of the public within the meaning of the Authorities, but is a fluctuating body of private individuals selected by reason of a purely personal relationship to a named corporation.

3.—Having found that the testatrix had a general charitable intent and having further found that " included in this intent was the division of charitable trusts which has been described as trusts for the relief of poverty," the learned Judge erred in holding that the general charitable intent should be " limited to this head of charitable relief."

4.—The Testatrix placed no restrictions on the discretion of the Board of Directors of the Canada Life Assurance Company in determining for what charitable purpose the income from the fund was to be applied, and the learned Judge erred in holding in effect that this discretion should be limited to the relief of poverty.

In the Supreme Court of Ontario, Court of Appeal.

No. 18. Notice of Appeal. 9th February 1950— *continued.*

5.—The first class of the persons to benefit directly in pursuance of such purposes " named by the testatrix " is employees of the Company and the learned Judge erred in assuming that any employee of such a company, or the dependents of such employee, could properly be regarded as being in such a condition of poverty as to be poor people within the statute of Elizabeth.

6.—The learned Judge should have held that the said trust was not a charitable trust and that, accordingly, there was an intestacy with respect to the funds comprising the same.

DATED AT TORONTO this 9th day of February, A.D. 1950.

McLAUGHLIN, MACAULAY, MAY AND SOWARD,
302 Bay Street, Toronto, Ontario,
Solicitors for William Burt Shepard.

To :

Frank McCarthy, Esq., K.C.,
Canada Life Building,
Toronto, Ontario,
Solicitors for the Executors of the said deceased.

AND TO :

J. J. Robinette, Esq., K.C.,
Canada Life Building,
Toronto, Ontario,
Counsel for the Board of Directors of the Canada Life Assurance Co., and for the employees of the Canada Life Assurance Company.

AND TO :

Messrs. Blake, Anglin, Osler and Cassels,
25 King St. W.,
Toronto, Ontario,
Solicitors for Miss Louise Shepard.

AND TO :

Armand Racine, Esq., K.C.,
Public Trustee for the Province of Ontario.

AND TO :

Percy D. Wilson, Esq., K.C.,
Official Guardian for the Province of Ontario.

In the Supreme Court of Ontario, Court of Appeal.

No. 19.
Affidavit of John William Blain.
13th March 1950.

No. 19.
Affidavit of John William Blain.

IN THE SUPREME COURT OF ONTARIO.

IN THE MATTER OF the Estate of LOUISE BOGART COX, late of the Town of Oakville, in the County of Halton, in the Province of Ontario.

IN THE MATTER OF The Trustee Act, R.S.O., Ch. 165, Sec. 59 ;

AND IN THE MATTER OF The Judicature Act, R.S.O., Ch. 100, Sec. 105, and Rule 600 of the Rules of Practice and Procedure passed pursuant thereto.

I, JOHN WILLIAM BLAIN, of the City of Toronto, in the County of York, Solicitor, MAKE OATH AND SAY :

1.—THAT I have inspected the book maintained by The Canada Life Assurance Company wherein are recorded the minutes and proceedings of meetings of directors and shareholders of The Canada Life Assurance Company.

2.—THAT according to information contained in the said book, the following persons were the directors of The Canada Life Assurance Company on April 28th, 1949, and on May 12th, 1949 :

Policyholders' Directors

E. G. Baker
R. C. H. Cassels
E. C. Gill
The Right Honourable Sir Thomas White
James V. Young.

Shareholders' Directors

The Honourable Leighton McCarthy
A. E. Arscott
Arthur V. Davis
H. L. Enman
W. J. Hastie
R. A. Laidlaw
A. N. Mitchell
John L. McCarthy
John Stuart
J. D. Woods

SWORN before me at the City of Toronto, in the County of York, this 13th day of March, 1950.

" J. W. BLAIN."

" JOHN W. BROOKE,"
A Commissioner, etc.

In the Supreme Court of Ontario, Court of Appeal.

No. 20. Order. 16th February 1951.

No. 20.

Order.

Cancelled
Law Stamps
$2.80

IN THE SUPREME COURT OF ONTARIO.

The Honourable Mr. Justice ROACH
The Honourable Mr. Justice AYLESWORTH
The Honourable Mr. Justice BOWLBY

Friday, the 16th day of February, A.D. 1951.

IN THE MATTER OF the Estate of LOUISE BOGART COX, late of the Town of Oakville, in the County of Halton, in the Province of Ontario.

AND IN THE MATTER OF The Trustee Act, R.S.O., Ch. 165, Sec. 59;

AND IN THE MATTER OF The Judicature Act, R.S.O., Ch. 100, Sec. 106, and Rule 600 of the Rules of Practice and Procedure passed pursuant thereto.

(SEAL)

S.C.O.

UPON motion made unto this Court on the 8th and 9th days of May, 1950, by counsel on behalf of William Burt Shepard, one of the next of kin of Louise Bogart Cox, by way of appeal from and to set aside the judgment of The Honourable Mr. Justice Wells dated the 27th day of January, 1950, in the presence of counsel for National Trust Company, Limited surviving executor and trustee of the last Will and Testament of Louise Bogart Cox, deceased, and the Board of Directors of The Canada Life Assurance Company, and for Edwin G. Baker appointed by order of the Court to represent the employees of the Canada Life Assurance Company, and for the Official Guardian appointed by order of the Court to represent any unascertained persons who may be interested in the residue of the said estate in the event of intestacy thereof and for the Public Trustee who has intervened under the provisions of Section 6, subsection 5, of The Charities Accounting Act and appointed by order of the Coutr to represent persons other than employees of The Canada Life Assurance Company who may benefit under the bequest provided in Clause 3 (F) of the last Will and Testament of the said Louise Bogart Cox, no one appearing on behalf of Louise Shepard although duly served with notice of the said appeal, upon reading the affidavits of John G. Hungerford, Clifford McCarthy (2) and John William Blain, filed, and the exhibits therein referred to, the said judgment of The Honourable Mr. Justice Wells dated the 27th day of January, 1950, and the reasons therefor, and upon hearing what was alleged by counsel

aforesaid, and counsel aforesaid agreeing that in the event this Court should be of opinion that the bequest hereinafter set forth is not a valid charitable bequest, it should be referred to the Master at Toronto to determine and report the next-of-kin of the said Louise Bogart Cox, deceased, and judgment upon the said appeal having been reserved until this day,—

No. 20. Order. 16th February 1951—*continued.*

1.—THIS COURT DOTH ORDER that the said appeal be and the same is hereby allowed and the said judgment is hereby varied by striking out paragraphs 3 and 4 thereof and substituting the following:

"3. AND THIS COURT DOTH DECLARE in answer to part (a) of question number (1) that Clause 3 (F) of the will of the said Louise Bogart Cox in the following terms

'(F) to hold all the rest, residue and remainder of my estate upon trust, as follows:

(a) To use so much of the income and/or capital thereof as may be necessary for the upkeep and maintenance of the properties described in Paragraph 3 (D) hereof.

(b) To pay the income thereof, subject to (a) hereof, in perpetuity for charitable purposes only; the persons to benefit directly in pursuance of such charitable purposes are to be only such as shall be or shall have been employees of The Canada Life Assurance Company and/or the dependents of such employees of said The Canada Life Assurance Company; subject to the foregoing restrictions, the application of such income, including the amounts to be expended and the persons to benefit therefrom, shall be determined by the Board of Directors of the said The Canada Life Assurance Company, as they, the said Board of Directors, in their absolute discretion shall from time to time decide. The Trust Fund is to be known as "The Cox Foundation" in memory of the family whose name has been so long associated with the said Company.'

does not constitute a valid charitable bequest and is therefore void as offending the rule against perpetuities AND DOTH ORDER AND ADJUDGE THE SAME ACCORDINGLY.

4. AND THIS COURT DOTH FURTHER ORDER that it be referred to the Master of this court at Toronto to determine and report the next-of-kin of the said Louise Bogart Cox, deceased."

2.—AND THIS COURT DOTH FURTHER ORDER that the costs of all parties appearing on the said appeal be taxed, those of the said surviving executor and trustee of the last Will and Testament of Louise Bogart Cox, deceased, as between solicitor and client, and be paid by the said executor and trustee out of the said estate forthwith after taxation.

"CHAS. W. SMYTH,"
Registrar S.C.O.

Entered OB211, Pages 360–361,
April 23, 1951.
"G. H."

In the Supreme Court of Ontario, Court of Appeal.

No. 21. Order of The Honourable Mr. Justice Laidlaw as to security for costs. 30th March 1951.

No. 21.

Order of The Honourable Mr. Justice Laidlaw as to security for costs.

(Law Stamps $1.40)

IN THE SUPREME COURT OF ONTARIO.

The Honourable Mr. Justice LAIDLAW in Chambers

" C.W.S." Friday, the 30th day of March, 1951.

(SEAL)

IN THE MATTER OF the Estate of LOUISE BOGART COX, late of the Town of Oakville, in the County of Halton, in the Province of Ontario.

IN THE MATTER OF The Trustee Act, R.S.O., Ch. 165, Sec. 59; 10

AND IN THE MATTER OF The Judicature Act, R.S.O., Ch. 100, Sec. 106, and Rule 600 of the Rules of Practice and Procedure passed pursuant thereto.

UPON the application by counsel on behalf of Edwin G. Baker, one of the persons who comprise the Board of Directors of The Canada Life Assurance Company, appointed by order of the Court to represent the employees of The Canada Life Assurance Company, and upon hearing read the certificate of The Canadian Bank of Commerce showing the payment into Court of $500.00 by the said Edwin G. Baker, and in the presence of counsel for National Trust Company, Limited, surviving Executor and 20 Trustee of the last Will and Testament of Louise Bogart Cox, deceased, and for the Board of Directors of The Canada Life Assurance Company, and for William B. Shepard, and for the Official Guardian appointed by order of the Court to represent any unascertained persons who may be interested in the residue of the said estate in the event of an intestacy thereof, and for the Public Trustee who has intervened under the provisions of Section 6, subsection 5, of the Charities Accounting Act and appointed by order of the Court to represent persons other than employees of The Canada Life Assurance Company who may benefit under the bequest provided in Clause 3 (F) of the Last Will and Testament of the said Louise 30 Bogart Cox, and upon hearing what was alleged by counsel aforesaid,

1.—IT IS ORDERED that the sum of $500.00 paid into Court as security that the said Edwin G. Baker will effectually prosecute his appeal from the order of the Court of Appeal for Ontario dated the 16th day of February, 1951, and will pay such costs as may be awarded against him by the

Supreme Court of Canada, be and the same is hereby allowed as good and sufficient security.

AND IT IS FURTHER ORDERED that the costs of this application be costs in the said appeal to be taxed by the Taxing Officer at Toronto.

Entered O.B. 212, Page 286,
March 31, 1951.
G. H.

" CHAS. W. SMYTH,"
Registrar, S.C.O.

In the Supreme Court of Ontario, Court of Appeal.

No. 21. Order of The Honourable Mr. Justice Laidlaw as to security for costs. 30th March 1951— *continued.*

No. 22.

Formal Judgment.

In the Supreme Court of Canada.

No. 22. Formal Judgment. 22nd December 1952.

IN THE SUPREME COURT OF CANADA.

Monday, the 22nd day of December, 1952.

Before

The Honourable Mr. Justice KERWIN
The Honourable Mr. Justice TASCHEREAU
The Honourable Mr. Justice RAND
The Honourable Mr. Justice KELLOCK
The Honourable Mr. Justice ESTEY
The Honourable Mr. Justice CARTWRIGHT
The Honourable Mr. Justice FAUTEUX

IN THE MATTER OF the Estate of LOUISE BOGART COX, late of the Town of Oakville, in the County of Halton, in the Province of Ontario ;

IN THE MATTER OF The Trustee Act, R.S.O. ch. 165, Sec. 59 ; and

IN THE MATTER OF The Judicature Act, R.S.O. ch. 100, Sec. 106, and Rule 600 of the Rules of Practice and Procedure passed pursuant thereto.

Between

EDWIN G. BAKER (appointed by order of The Honourable Mr. Justice Wells to represent the employees of The CANADA LIFE ASSURANCE COMPANY) ... ... *Appellant*

and

NATIONAL TRUST COMPANY, LIMITED, surviving Executor and Trustee of the Last Will and Testament of Louise Bogart Cox, deceased, THE BOARD OF DIRECTORS OF THE CANADA LIFE ASSURANCE COMPANY, WILLIAM BURT SHEPARD, THE OFFICIAL GUARDIAN FOR THE PROVINCE OF ONTARIO, and THE PUBLIC TRUSTEE FOR THE PROVINCE OF ONTARIO *Respondent.*

In the Supreme Court of Canada.

No. 22. Formal Judgment. 22nd December 1952—*continued.*

The appeal of the above-named Appellant from the judgment of the Court of Appeal for Ontario pronounced in the above cause on the 16th day of February in the year of Our Lord 1951 varying the judgment of The Honourable Mr. Justice Wells of the Supreme Court of Ontario rendered in the said cause on the 27th day of January in the year of Our Lord 1950 having come on to be heard before this Court on the 12th, 13th and 14th days of May in the year of Our Lord 1952, in the presence of counsel as well for the Appellant as for the Respondents, whereupon and upon hearing what was alleged by counsel aforesaid, this Court was pleased to direct that the said appeal should stand over for judgment and the same coming on this day for judgment, THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for Ontario should be and the same is affirmed and that the said appeal should be and the same was dismissed.

AND THIS COURT DID FURTHER ORDER AND ADJUDGE that the costs of all parties to this appeal be taxed, those of the surviving executor and trustee of the will of the testatrix as between solicitor and client, and be paid by the said executor and trustee out of the said estate forthwith after taxation.

PAUL LEDUC,
Registrar.

In the Supreme Court of Ontario.

No. 23. Reasons for Judgment of Wells, J. 27th January 1950.

HERBERT COPLIN COX, deceased
and
LOUISE BOGART COX, deceased.

No. 23.

Reasons for Judgment of Wells, J.

IN THE SUPREME COURT OF ONTARIO.

H.C.J.

IN THE MATTER OF the Estate of HERBERT COPLIN COX, late of the Town of Oakville, in the County of Halton, in the Province of Ontario ;

IN THE MATTER OF the Estate of LOUISE BOGART COX, late of the Town of Oakville, in the County of Halton, in the Province of Ontario.

Copy of Reasons for Judgment of Wells, J., delivered 27th January, 1950.

Beverley Matthews, K.C., and *W. C. Terry*, for the administrators with the Will Annexed of the last will and testament of the late Herbert Coplin Cox.

The Honourable Salter A. Hayden, K.C., for the executors of the last will and testament of the late Louise Bogart Cox.

J. J. Robinette, K.C., and *J. W. Blain*, for the Board of Directors, the Canada Life Assurance Company, and for the Employees of The Canada Life Assurance Company (by order); as to J. J. Robinette, K.C.

Harold Walker, K.C., for Miss Louise L. Shepard.

D. L. McCarthy, K.C., for Alfred H. Cox as a beneficiary.

J. D. Arnup, for Margaret Jane Ardagh, and by order, next-of-kin not named in Will.

W. H. Noble, for Douglas Cox Ames, one of the next-of-kin.

F. T. Watson, K.C., for the Official Guardian.

F. Costello, for the Public Trustee.

H. J. McLaughlin, K.C., for Dr. William Burt Shepard, a brother of Miss Sheperd, one of next-of-kin of Mrs. Cox.

WELLS, J.: This is an application for the advice and direction of the Court as to the residuary trusts in the last wills and testaments of the late Herbert Coplin Cox and of his widow, the late Mrs. Louise Bogart Cox. At the opening of the argument an application was made to have Mr. Robinette appointed to represent the employees of The Canada Life Assurance Company who might benefit under the gifts in question, and Mr. J. D. Arnup to represent any of the next-of-kin who were not specifically mentioned in the wills of the testator and testatrix. Orders were made accordingly. The question arising under each will were argued together.

While a number of similar questions were asked in each notice of motion only question (1) (a) was argued before me. It was agreed by counsel that on answering this I would remit the matter back to Weekly Court for further consideration when the parties so desired.

While there are differences in the various bequests in the two wills, the clauses disposing of the residue in each case, are, for all practical purposes, identical. The question is the same in respect of each will. Subject to the prior directions in trustees are directed to hold the balance of the residue of the estate of the testator upon trust.

"To PAY the income thereof in perpetuity for charitable purposes only; the persons to benefit directly in pursuance of such charitable purposes are to be only such as shall be or shall have been employees of The Canada Life Assurance Company and/or the dependents of such employees of said The Canada Life Assurance Company; subject to the foregoing restrictions, the application of such income, including the amounts to be expended and the persons to benefit therefrom shall be determined by the Board of Directors of the said The Canada Life Assurance Company, as they, the said Board of Directors, in their absolute discretion shall from time to time decide. The Trust Fund is to be known as 'The Cox Foundation' in memory of the family whose name has been so long associated with the said Company."

In the Supreme Court of Ontario.

No. 23. Reasons for Judgment of Wells, J. 27th January 1950— *continued.*

The question asked of me is, " Is this disposition a valid charitable bequest ? "

It is I think quite clear on the authorities that a gift, to hold for charitable purposes only without a further direction, is good and sufficient to constitute a valid charitable bequest. As Kelly J. said in *Re Stewart*, 28 O.W.N. 479 at p. 480 :—

" (5) The bequest of ' the balance of the interest on mortgage investments to be used for charitable purposes as my executors may deem best ' and the bequest of ' principal to be given to such charities as my executors may deem most deserving ' are not void for uncertainty, but are good and valid charitable bequests."

The English authorities on this point are quoted by Tudor (5th Ed.) at page 3. The matter was also discussed by Sargant J. in the case of *In re Eades ; Eades* v. *Eades*, [1920] 2 Ch. 353. In the result Sargant J. held that the particular gift being considered by him was not a good charitable gift. The direction in that case was to pay to such religious, charitable and philanthropic objects as the testator's wife and two other trustees might appoint.

In the case at bar, however, the payment of income is limited " for charitable purposes only " and I think there can be no question that this gift must be deemed to be for any of the four purposes which the authorities have laid down as compendiously describing charitable trusts.

Also it is to be noted that under the scheme of both wills no land is directed to be held for the purposes of charity but powers of postponement and eventual realization are given to the trustees and what the directors of the intended charity get is the benefit of the whole residuary estate to be realized by the executors. It would appear to be quite clear that The Mortmain and Charitable Uses Act does not apply to this bequest although it is interesting to note that the definition of charitable uses in that statute would appear to be identical with the general headings which the Courts have used to define the term " charity " in a long series of decisions. In this connection reference may be made to *Re Barrett*, 10 O.L.R. 337.

Charitable purposes under our law may be generally described in the words used by Lord Macnaghten in his celebrated judgment in *The Commissioners for Special Purposes of the Income Tax* v. *Pemsel*, [1891] A.C. 531 at 583, where he adopted the argument used by Sir Samuel Romilly before Lord Eldon in the case of *Morice* v. *Bishop of Durham*, 10 Ves. Jr. 521 at 531. As Lord Macnaghten pointed out at p. 580 :—

" That according to the law of England a technical meaning is attached to the word 'charity,' and to the word ' charitable ' in such expressions as ' charitable uses,' ' charitable trusts,' or ' charitable purposes,' cannot, I think, be denied. The Court of Chancery has always regarded with peculiar favour those trusts of a public nature which, according to the doctrine of the Court derived from the piety of early times, are considered to be charitable. Charitable uses or trusts form a distinct head of equity. Their distinctive position is made the more conspicuous by the circumstance that owing to their nature they are not obnoxious to the rule against

perpetuities, while a gift in perpetuity not being a charity is void. Whatever may have been the foundation of the jurisdiction of the Court over this class of trusts, and whatever may have been the origin of the title by which these trusts are still known, no one I think who takes the trouble to investigate the question can doubt that the title was recognized and the jurisdiction established before the Act of 43 Eliz. and quite independently of that Act. The object of that statute was merely to provide new machinery for the reformation of abuses in regard to charities. But by a singular construction it was held to authorize certain gifts to charity which otherwise would have been void. And it contained in the preamble a list of charities so varied and comprehensible that it became the practice of the Court to refer to it as a sort of index or chart. At the same time it has never been forgotten that the ' objects there enumerated,' as Lord Chancellor Cranworth observes (1 D. & J. 79), ' are not to be taken as the only objects of charity but are given as instances '."

Later Lord Macnaghten said at p. 583 :—

" ' Charity ' in its legal sense comprises four principal divisions ; trusts for the relief of poverty ; trusts for the advancement of education ; trusts for the advancement of religion ; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads. The trusts last referred to are not the less charitable in the eye of the law, because incidentally they benefit the rich as well as the poor, as indeed, every charity that deserves the name must do either directly or indirectly."

As I have said, I must assume that all these four heads were intended to be included by these two testators in the phrase used by them to denote the purpose for which the residue of their assets was to be left, that is " for charitable purposes only."

It is however apparent from the authorities that a further inquiry must be made, and that is as to whether the gift is one for the benefit of the public. As Lord Wrenbury said in delivering the judgment of the Judicial Committee in *Verge* v. *Somerville*, [1924] A.C. 496 at p. 499 :—

" To ascertain whether a gift constitutes a valid charitable trust so as to escape being void on the ground of perpetuity, a first inquiry must be whether it is public—whether it is for the benefit of the community or of an appreciably important class of the community. The inhabitants of a parish or town, or any particular class of such inhabitants, may, for instance, be the objects of such a gift, but private individuals, or a fluctuating body of private individuals, cannot. If this test is satisfied, is it necessary to find, further, that the class is confined to poor persons, to the exclusion of persons not poor ? Is poverty a necessary element ? In argument it was scarcely pressed that it is necessary and after the decision in *Goodman* v. *Mayor of Saltash*, 7 App. Cas. 633, it was not possible to maintain the general proposition that it is."

Reference may also be made to the recent decision of the House of Lords in *Gilmour* v. *Coats*, [1949] A.C. 426.

Now, under the wills in question the persons who are to benefit " are

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to be only such as shall be or shall have been employees of The Canada Life Assurance Company and/or the dependents of such employes of the said The Canada Life Assurance Company," and there is a further limitation given the Directors of the Company a power to select persons from this class as objects of the bounty of the fund provided. Is there in this group of people who comprise the past, present and future employees of the Company, together with their dependents, a sufficient element of the community to provide that appreciably important class of the community which enables the Court to say that the gift is a public one, in the sense already explained by Lord Wrenbury ?

An examination of the cases dealing with the matter leads one to agree most fully with the remarks of Lord Simonds in *Gilmour* v. *Coats*, already cited, here he said at page 449 :—

" But it is, I think, conspicuously true of the law of charity that it has been built up, not logically, but empirically. It would not, therefore, be surprising to find that, while in every category of legal charity some element of public benefit must be present, the Court had not adopted the same measure in regard to different categories, but had accepted one standard in regard to those gifts which are alleged to be for the advancement of education and another for those which are alleged to be for the advancement of religion, and it may be yet another in regard to the relief of poverty. To argue by a method of syllogism or analogy from the category of education to that of religion ignores the historical process of the law."

An examination of the cases in question shows an imposing variation of judicial opinion and one can quote with great sympathy the remark of the learned editor Halsbury (4 Halsbury, II Ed., p. 110, para. 146) where he says :

" The line of distinction between purposes of a public and of a private nature is fine and practically incapable of definition. Thus an orphanage for the children of deceased railway servants has been held to be a public charity ; and trusts for old and worn out clerks of a particular firm, for the education of children of employees, and for poor and incapacitated employees, of a company have been held charitable ; but a trust to contribute to the holiday expenses of the workpeople employed in a certain department of a company's business has been held not to be a trust for public purposes but for private individuals and so not charitable.

The same editor's later comment where he attempts to deduce a rule from the bewildering variety of judicial decision is of interest. As he puts it, " It is submitted that a gift to a section of the public is not charitable if the section is so small that the gift amounts to a gift to specified individuals, even though the motive of the donor may be to accomplish a purpose which would be legally charitable if the objects of his bounty had not been so restricted." (4 Halsbury, II Ed., p. 128, note (1).)

Counsel for those who seek to establish that these bequests are not good charitable bequests took the position before me as stated by Mr. Arnup, to whose thorough and cogent argument I am much indebted, that these bequests did not create a valid charitable trust under any of the four

headings in the *Pemsel* case because as it is put to me it is not a public charity in law. The matter has been dealt with in a series of cases in so far as the general question is concerned commencing with the case of *Re Gosling* ; *Gosling* v. *Smith*, [1900] 48 W.R. 300. This was followed by *In re Drummond* ; *Ashworth* v. *Drummond*, [1914] 2 Ch. 90, following which there was a further decision of Eve, J., the Judge who decided *In re Drummond* in the case of *Re Rayner* ; *Cloutman* v. *Regnart*, 122 L.T.R. 577. These cases are not entirely consistent one with the other, particularly the two decisions of Eve, J., in *In re Drummond* and *Re Rayner*, and it was argued by those seeking to uphold the trust that the correct principles were those followed in *Re Gosling* and *Re Rayner*. There has been, however, more recently now three decisions of the Court of Appeal of England dealing with the problem of the public nature of a charity and a perusal of these decisions must, I think, make it clear that the authority of *Re Gosling* as to what is a portion of the public and *Re Rayner* has been cut away by the subsequent decisions and that the correct reasoning is found in *In re Drummond* and in the later decisions of the Court of Appeal in *In re Compton* ; *Powell* v. *Compton*, [1945] 1 Ch. 123, and *In re Hobourn Aero Component Limited's Air Raid Distress Fund* : *Ryan* v. *Forrest*, [1946] 1 Ch. 194, and the latest decision delivered in the Court of Appeal subsequent to the argument before me in the case of *Gibson and Another* v. *South American Stores* (*Gath & Chaves*) *Ld. and others* (1949), W.N. 470.

It may be of some assistance if the cases are briefly reviewed.

Re Gosling : *Gosling* v. *Smith* dealt with the case of certain funds left for the purpose of pensioning off old and worn-out clerks of a certain firm of which the testator had been a partner. Byrne, J., upheld the charitable nature of the bequest on two grounds. As he pointed out, among other charitable objects enumerated in the statute of Elizabeth the " aged " and " impotent " were especially mentioned. The note of his judgment in the report goes on to point out that in the Judge's opinion " old and worn-out clerks " came within this description and he thought " moreover, having regard to the phrase ' pensioning off ' and to the frame of the gift that poor clerks of the firm and those unable properly to provide for themselves and their families are intended to be benefited." From this aspect *Re Gosling* would appear to be classed with the cases which Lord Greene describes as " poor relations " cases and as has been said of other decisions the fact of poverty may have operated to save the gift for charity. On the question as to public purpose Byrne, J., said at p. 301 :

" The fact that the section of the public is limited to persons born or residing in a particular parish, district or county, or belonging to or connected with any special sect, denomination, guild, institution, firm, name, or family, does not of itself render that which would be otherwise charitable void for lack of a sufficient or satisfactory description or take it out of the category of charitable gifts."

This was followed by the decision of Eve, J., in *In re Drummond* : *Ashworth* v. *Drummond*, the gift here was a gift of preference shares to trustees to pay the income therefrom to the directors of James Drummond

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& Sons, Limited, for the purposes of contributing to the holiday expenses of work people employed in the spinning department of James Drummond & Sons, Limited, in such manner as a majority of the directors should in their absolute discretion think fit. There was no indication that the relief in this case was to be limited to those who were in a condition of poverty. At page 96 Eve, J., pointed out that he could not judicially hold that such a large body of work people working even at a small wage, could properly be regarded as being in such a condition of poverty, as to be poor people within the statute of Elizabeth, and he then said :—

" Then it is said, even if that be so, the gift may still be a good charitable gift in that it is a gift for general public purposes, to be applied for the benefit of a particular section of the public, and is within the principles underlying that class of case in which a good charitable trust has been held to be created, not for all the inhabitants of any particular town, village, or borough, but for a particular, and very often a small, section of those inhabitants, such, for example, as a trust for the benefit of those possessing certain qualifications (freemen of the borough), or residing in certain tenements, or constituting a particular class, such as widows, or aged persons. I confess if I could have seen my way to uphold the gift on that line of authority I should have been pleased to do so, because, undoubtedly, the dividing line is a very fine one. Mr. Austen-Cartmell argues that the trust is really a trust for public purposes, the securing of a holiday for a large body of the inhabitants of this particular city, and the benefiting thereby of the general health of the community ; that it only differs from the cases on which he relied in that it fixes the qualification, not with reference to any particular franchise, but with reference to employment in a particular business, and a particular department in that business, and he contends that, if a public trust can be created for the occupiers for the time being of a few small cottages in a Hampshire village, a similar trust can certainly be created for the large aggregation of persons constituting for the time being the employees in some of these great industrial undertakings. I think the answer to that argument has been supplied by Mr. Clayton in the course of his reply. This is not a trust for general public purposes ; it is a trust for private individuals, a fluctuating body of private individuals it is true, but still private individuals, and that being so it is outside the line of authorities cited, and not being for public purposes it is not charitable, but is void as infringing the rule against perpetuities."

This was followed by another decision of Eve J. in the case of *Re Rayner : Coutman* v. *Regnart*, 122 L.T.R. 577. Here the gift was a gift of shares to be held in trust with a direction that the income from them should be applied for the education of the children of employees for five years and upwards in the company's employment, such children to be of fourteen years or upwards and to be selected by the governors of the company as the most worthy and deserving. At page 578 Eve J. said :—

" In this case there is present in each gift an element which was wanting in *Re Drummond : Ashworth* v. *Drummond* (111 L.T. Rep. 156 ; [1914] 2 Ch. 90) ; the object of the first gift is to promote education, that of the

second to alleviate the poverty of persons incapacitated from earning their living by age, accident, illness, or other causes. In *Re Drummond*, the Court was not able to construe the gift as restricted to the relief of poor people within the meaning of the statute of Elizabeth, but here the gifts are in each case for objects within that statute, and are accordingly charitable gifts. They are, it is true, limited to a section of the public, but the section intended to be benefited is sufficiently defined, and the right to select the particular recipients and the power to fix the allowance to be made do not operate in any way to alter the charitable gifts and the latter, in my opinion, entirely covered by the decision in *Re Gosling : Gosling* v. *Smith*, ([1900] W.N. 15 ; 48 W.R. 300)."

Reading the two decisions of Eve J. in *Re Rayner* and *In re Drummond*, on a thorough examination of the cases in question it is I think almost impossible to reconcile them upon any consistent principle and the law stood in this condition when the Court of Appeal decided *In re Compton : Powell* v. *Compton*, [1945] 1 Ch. 123, where the judgment of the Court was delivered by the then Master of the Rolls, Lord Greene. In this case a testatrix provided, inter alia, that certain money was to be held by her trustees and invested in trustee stocks under a trust forever for the education of certain Compton, Powell and Montagu children not over the age of 26 years, which she further defined. After setting out the trust and further defining it, Lord Greene quoted the remarks of Lord Wrenbury already referred to as to the public nature of the charitable trust and then commented as follows at p. 129 :—

" No definition of what is meant by a section of the public has, so far as I am aware, been laid down and I certainly do not propose to be the first to make the attempt to define it. In the case of many charitable gifts it is possible to identify the individuals who are to benefit or who at any given moment constitute the class from which the beneficiaries are to be selected. This circumstance does not, however, deprive the gift of its public character. Thus if there is a gift to relieve the poor inhabitants of a parish the class to benefit is readily ascertainable. But they do not enjoy the benefit when they receive it by virtue of their character as individuals but by virtue of their membership of the specified class. In such a case the common quailty which unites the potential beneficiaries into a class is essentially an impersonal one. It is definable by reference to what each has in common with the others and that is something into which their status as individuals does not enter. Persons claiming to belong to the class do so not because they are A.B., C.D. and E.F., but because they are poor inhabitants of the parish. If in asserting their claim it were necessary for them to establish the fact that they were the individuals A.B., C.D., and E.F., I cannot help thinking that on principle the gift ought not to be a charitable gift, since the introduction into their qualification of a purely personal element would deprive the gift of its necessary public character. It seems to me that the same principle ought to apply when the claimants, in order to establish their status, have to assert and prove, not that they themselves are A.B., C.D. and E.F., but that they stand in some specified

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relationship to the individuals A.B., C.D., and E.F., such as that of children of employees. In such a case, too, a purely personal element enters into and is an essential part of the qualification, which is defined by reference to something, i.e., a personal relationship to individuals or an individual which is in its essence non-public. An example of this class of case is to be found in *In re Drummond.* There a testator bequeathed shares to his trustees on trust to pay the income to the directors of a company for the purpose of contributing to the holiday expense of certain of its workpeople. The qualification therefore was that of a particular relationship (namely, that of an employee of the specified class) to a named person, i.e., the company. After dismissing the argument that the bequest ought to be construed as being one in relief of poverty, Eve J. dealt with the contention that the gift was ' a gift for general public purposes to be applied for the benefit of a particular section of the public.'

" The following quotation from the judgment (at p. 96) brings out the point which I am endeavouring to make : ' Mr. Austen-Cartmell argues that the trust is really a trust for public purposes, the securing of a holiday for a large body of the inhabitants of this particular city, and the benefiting thereby of the general health of the community ; that it only differs from the cases on which he relied in that it fixes the qualification, not with reference to any particular place of residence, or to the possession of any particular franchise, but with reference to employment in a particular business, and a particular department in that business, and he contends that, if a public trust can be created for the occupiers for the time being of a few small cottages in a Hampshire village, a similar trust can certainly be created for the large aggregation of persons constituting for the time being the employees in some of these great industrial undertakings. I think the answer to that argument has been supplied by Mr. Clayton in the course of his reply. This is not a trust for general public purpose ; it is a trust for private individuals, a fluctuating body of private individuals it is true, but still private individuals, and that being so it is outside the line of authorities cited, and not being for public purposes it is not charitable, but is void as infringing the rule against perpetuities.'

" The fact that in cases where a personal element forms an essential part of the qualification the numbers involved may be large does not appear to me to make any difference to the principle to be applied. Once that element is present numbers can make no difference. The gift is in such a case a personal gift. It may, of course, fail for uncertainty, but that is neither here nor there. As a personal gift it will be obnoxious to the rule against perpetuities ; but it would not have been affected by the Statute of Mortmain. I come to the conclusion, therefore, that on principle, a gift under which the beneficiaries are defined by reference to a purely personal relationship to a named *propositus* cannot on principle be a valid charitable gift. And this, I think, must be the case whether the relationship be near or distant, whether it is limited to one generation or is extended to two or three or in perpetuity. The inherent vice of the personal element is present however long the chain and the claimant cannot avoid basing his claim upon it."

Looking at the facts which the Court had to consider in *In re Compton* the decision does not seem to be open to criticism, but it is only fair to state that the principles laid down by Lord Greene seem to go beyond what was necessary to deal with the point before the Court and indeed appear to lay down a general principle relating to the law of charities which had not been so explicitly elucidated in any of the previous decisions. If the matter had rested there I might be reminded of Sir Cyril Atkinson's warning in *Lorentzen* v. *Lydden and Company, Limited*, [1942] 2 K.B. 202 at 210 where he said :—

" Again and again judges have been told by the Court of Appeal and the House of Lords that words used in previous cases must be interpreted with reference to the facts before the court and the issues with which it was dealing."

As I have already observed it is almost impossible to reconcile the two previous decisions of Eve J. in *In re Drummond and Re Rayner*. In discussing this apparent conflict Lord Greene said of *Re Rayner* in the *Compton* case at page 134 :

" Eve J. did not have the advantage of any argument, since the only person interested in disputing the validity of the gift was the executor, who supported the view that it was a valid charitable gift. In a very short judgment Eve J. said that there was present an element which was wanting in his earlier decision, already quoted, *In re Drummond* in that the object of the gift was to promote education. He distinguished *In re Drummond* on the ground that in that case the gift was not restricted to the relief of poor people within the meaning of the statute, and said that in the case before him the gift was for an object within the statute and was accordingly a charitable gift. He was of opinion that the gift was ' it is true limited to a section of the public, but the section intended to be benefited was sufficiently defined.' I do not regard this as a satisfactory decision. There was no argument ; the learned Judge without giving any reasons treated the gift as one in favour of a section of the public ; and in distinguishing *In re Drummond* he apparently overlooked the fact that in that case the absence of the element of poverty was only one of the grounds of the decision. As I have already pointed out, the argument that the case fell within the fourth of Lord Macnaghten's classes was negatived on the ground that the trust in favour of the employees of the company was a trust not for public purposes but for private individuals. The decision, in my opinion, was wrong, so far as it dealt with the educational trust."

Counsel seeking to uphold the charitable nature of the case under consideration argued before me that while the authority of *Re Rayner* may have disappeared as a result of the judgment of the Court of Appeal in the *Compton* case the earlier judgment in *Re Gosling* was not affected. In so far as *Re Gosling* may be regarded as one of the cases dealing with the relief of poverty I would agree with this contention but the observations in it as to the public nature of the group which the testator intended to benefit cannot, I think, now be held to lay down any general rule which subsequent Judges should follow in determining whether those intended to

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be benefited form a sufficient section of the public. In view of the observations of Lord Greene already quoted it would seem to me that as to this aspect of the decision, if *Re Rayner* is wrong then the reasoning in *Re Gosling* is equally so and both cases must be regarded as overruled by the subsequent decision of the Court of Appeal in so far as they are authorities in defining as to whether the gift is one for the benefit of the public or an appreciably important section of the public.

Some further light may be thrown on the situation by the next case dealing with the problem, which was a decision of Sir Raymond Evershed, now Master of the Rolls, when he was sitting as a Judge of the Chancery Division. This was the case of *In re Tree Idle* v. *Tree*, [1945] 1 Ch. 325. Here the gift to trustees was for the purpose of assisting persons who resided in the Borough of Hastings in or prior to the year 1880 or the descendants of such persons, to emigrate to any of the Dominions of the British Empire. Evershed J. held that this was not a definition of a class to be benefited by reference to descent from some specified individual or individuals selected by the donor but by reference to a section of the public. As he said at p. 331 :—

" As I have already indicated, I think the essential quality here is the connexion, albeit at one, or more than one, remove, with a particular locality, Hastings. True it is, as Mr. Cross urges, that proof of ancestry in a sense is something personal. But, in my view, proof of descent from a resident in Hastings, that is not from a named resident but from any resident, is, within the principle of *In re Compton*, proof of a quality which is impersonal in the sense that, so far as this testator is concerned, the residents, or the descendants of residents, as individuals, are at no link in the chain selected by him as such, nor is he in the least concerned who they, as individuals may be. It is open to any person who can claim to have the characteristic of a Hastings ancestry, if I may so describe it, to come in and say : ' I am a member of the class entitled to benefit.' And that class, however awkwardly ascertained or defined, is a section or portion of the general public.

This was followed by a further decision of the Court of Appeal in 1946 in the case of *In re Hobourn Aero Components Limited's Air Raid Distress Fund : Ryan* v. *Forrest*, [1946] 1 Ch. 194. The principal judgment in this case was also given by Lord Greene and concurred in by Morton and Somervell L.JJ. It is to be noticed that two members of the Court, that is Lord Greene and Morton L.J. had taken part in the judgment in the *Compton* case. In this case the matter dealt with was a fund collected by the employees of a company for the purposes of a war emergency fund. For some time the money was used for the purpose of buying comforts or money payments for ex-employees serving abroad or at home, but later it was used to relieve cases of employees who had suffered damage and distress from air raids. Claims were only entertained from persons who had contributed to the fund. The fund was closed and the application before the Court was as to the disposition of the surplus money still in it. The Court held that

the fund was not held on any charitable trust. In the course of the argument Lord Greene re-affirmed his belief in the correctness of the view he had expressed in *In re Compton* and in the same judgment Morton L.J. dealt with an argument that had been advanced to the Court as to the views there expressed, at page 208, as follows :—

" In the course of the argument of the Attorney-General and Mr. Upjohn *In re Drummond* was criticized, notwithstanding the approval of it indicated by this court *In re Compton.* It was said that any expressions of approval were not necessary for the decision of *In re Compton* and that this Court is not bound by them. I desire to say quite plainly that I entirely approve of the decision in *In re Drummond.*"

and later at the bottom of the same page he observed further :—

" Charities are rightly privileged as regards freedom from income tax and freedom from the restrictions imposed by the rule against perpetuities, and it is important that those privileges should really be restricted to purposes which benefit the public or some section of the public. I think *In re Drummond* imposed a very healthy check upon the extension of the legal definition of ' charity ' and I suspect that if the decision had been the other way it would have been followed by a case in which it would have been argued that, if the provision of holidays for the employees of a large company was a charitable object, so also was the provision of holidays for employees of a partnership firm employing, say, one hundred persons. Next there would have followed an argument that the same would apply in the case of a partnership firm employing eight persons. In the present case, as I have said, the trust is for the employees of a particular company and such a trust is not, in my view, a trust for the benefit of the community, or of a section of the community : see *In re Compton.*"

It is to be noted, however, that in both the decision *in Re Compton* and in the *Hobourn* case an exception is admitted by Lord Greene and Morton L.J. in respect of what Lord Greene described as the " poor relations" cases, that is cases in which the object of the charitable gift was primarily the relief of poverty. In a number of cases it was held that benefits in such a case might be limited to those who claim by reason of a personal relationship to the donor. In *In re Compton* Lord Greene commented on these cases at page 137 :—

" I must now turn to the ' poor relations ' cases on the analogy of which Cohen J. felt himself constrained, against his own view, to decide against the next of kin. The authorities relied on by the respondent are as follows : In *Isaac* v. *De Friez,* 2 Amb. 595, the gifts were (1) a gift of two annuities to the poorest relations of the testator and of his wife ; (2) a gift of income to one poor relation of the testator ' for a portion in the way of marriage and putting him or her out in the world,' and (3) a similar gift of income to one poor relation of his wife. These gifts were upheld as good charitable gifts, but no reasons for the decision appear in the report. This case was followed in *Attorney-General* v. *Price,* 17 Ves. 371, where the gift was in favour of the testator's ' poor kinsmen and kinswomen and their offspring

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and issue which shall dwell in the county of Brecon.' Sir William Grant M.R. followed *Isaac* v. *De Friez* saying : ' This seems to be just as much in the nature of a charitable bequest as that. It is to have perpetual continuance, in favour of a particular description of poor ; and is not like an immediate bequest of a sum to be distributed among poor relations.'

" In an earlier case *White* v. *White*, 7 Ves. 423, Sir William Grant had supported as charitable a gift by a testatrix for the purpose of putting out ' our poor relations ' as apprentices. By a codicil this gift was confined to two families. Sir William Grant appears to have thought that the case was similar to an earlier case of his own where ' a great number of Jews were the objects ' ; such a gift would no doubt be regarded today as satisfying the well-established rule that a good charitable gift must be for the benefit of the public or a section of the public, a test which Sir William Grant does not appear to have taken into consideration in *White* v. *White*, or in *Attorney-General* v. *Price*. *Bernal* v. *Bernal* (1838), 3 Myl. & Cr. 559, was a case in which the only matter decided arose on the construction of a will providing for poor relations who were in fact (as the will was construed) the male descendants of certain named relatives of the testator. It appears from the petition that the gift was established as a charity under a decree of December 9, 1728. What the reasons were for the decision in that behalf does not appear, and when the question of construction was raised in 1838 before Lord Cottenham L.C., there was no issue as to the charitable nature of the bequest. In *Browne* v. *Whalley*, [1866] W.N. 686, where the gift was for the relations of the testator ' who might happen to be in want or fall to decay,' the charity had similarly been established by a decree of the year 1763. In *Gillan* v. *Taylor*, L.R. 16 Eq. 581, the gift was in favour of such of the lineal descendants of the testator's maternal uncle as they might severally need. This was held to be a good charitable gift on the authority of *Isaac* v. *De Friez* and *Attorney-General* v. *Price*. In *Attorney-General* v. *Duke of Northumberland*, 7 Ch. D. 745, the will, as construed by Sir George Jessel M.R., was in favour of poor persons generally with a preference for poor persons who were kindred of the testator, and in that respect the case was similar to the ' founder's kin ' cases. But Sir George Jessel in his judgment referred to *Isaac* v. *De Friez* and *Attorney-General* v. *Price* and did not cast doubt on the correctness of those decisions. From this review of the authorities it will be seen that they are really all derived from *Isaac* v. *De Friez* and *Attorney-General* v. *Price*. We are invited to over-rule them. I agree that they are far from satisfactory, and the original decisions were given at a time when the public character of a charitable gift had not been as clearly laid down as it has been in more modern authorities. If the question of the validity of gifts of this character had come up for the first time in modern days I think that it would very likely have been decided differently on the ground that their purpose was a private family purpose, lacking the necessary public character but it is in my view quite impossible for this court to overrule these cases. Many trusts of this description have been carried on for generations on the faith that they

were charitable, and many testators have no doubt been guided by these decisions. The cases must at this date be regarded as good law, although they are, perhaps, anomalous."

In the *Hobourn* case Lord Greene again returned to a consideration of the " poor relations " cases and at page 205 of the report of his reasons there is a most useful analysis of the various decisions and his final conclusion at page 206 should, I think, be quoted :—

" The importance of poverty in my opinion is that it is a necessary object where the class of trust with which you are dealing is one which prima facie is for the purely personal benefit of individuals. It may be possible on the authorities, as I have said, to get such a trust into the category of charity, provided it is for the relief of poverty on its true construction. It is no argument to say because in *In re Hillier*, [1944] 1 All E.R. 480, poverty was not regarded as essential, therefore it is not to be regarded as essential in such a case as this."

It is important to remember that in the wills under consideration by me there is a general direction to hold the funds " for charitable purposes only." One of these purposes is undoubtedly the relief of poverty and in view of the exception noted by the Court of Appeal it may well be that the bequest is a valid one for the relief of poverty in the class defined by the testators. As Morton L.J. pointed out in the *Hobourn* case at page 210 :—

" . . . where poverty is essential in the qualification for benefits under a particular fund, there have been cases where trusts which would appear to be of a private nature have been held to be charitable. An example of this is the case of *Spiller* v. *Maude*, 32 Ch. D. 158, which has been already mentioned. The reason, as was suggested by the Master of the Rolls in *In re Compton* may be that the relief of poverty is regarded as being in itself beneficial to the community."

A recent consideration of the problem is found in the decision of Harman J. in the case of *Gibson and Another* v. *South American Stores (Gath & Chaves) Ld. and Others*, [1949] 2 All E.R. 18, where a trust for the employees of certain companies was held to be a good charitable trust, it being a necessary qualification of the recipients that they were necessitous. This case has now been dealt with by the Court of Appeal and in the reports presently available is found in [1949] W.N. 470. The judgment of the Court of Appeal was delivered by Sir Raymond Evershed M.R. and the notes of his judgment at page 471, even in the somewhat concise form in which the reasons are stated, should, I think, be quoted :—

" It must now be taken to be concluded, so far as the Court of Appeal was concerned, that—at any rate where a trust was not for the relief of poverty—the employees of a particular undertaking were not such a section of the community that a trust in their favour would qualify as a charity : *In re Drummond*, [1914] 2 Ch. 90 ; *In re Compton*, [1945] Ch. 123. The question, however, arose whether the same was true where the trust was one for the relief of poverty. When Harman J. heard this summons it was apprehended that there was no decision either way which was directly in point on that problem, but that there were three cases at first instance

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where a cognate problem had been considered; *Spiller* v. *Maude* (1881), 32 Ch. D. 158, note; *In re Gosling*, [1900] 48 W.N. 15; *In re Buck*, [1896] 2 Ch. 727. Harman J. faced on the one hand with the decisions in the poor relations cases and on the other hand with those three cases, concluded that consistency could only be achieved by treating the relief of poverty as in itself supplying the necessary public element. In the light of the observations of Lord Greene M.R. in *In re Compton* (*supra*) he (the Master of the Rolls) thought it would be impossible to treat the poor relation cases as wrongly decided. It appeared however that on January 11, 1935, there came before the Court of Appeal the case of *In re Sir Robert Laidlaw's Trusts* (1934), L. No. 192. That decision had not been reported, but a trust similar to that under consideration in this case was there upheld as a valid charitable trust. It appeared that the point raised in the present case was inevitably and directly involved in the *Laidlaw* case. In *Young* v. *Bristol Aeroplane Co., Ltd.*, [1944] K.B. 718, it was laid down that the Court of Appeal was bound by its own previous decisions. Accordingly they were bound to hold that this trust was a valid charitable trust."

Other cases dealing with this apparent exception to the principle which Lord Greene has sought to establish may be found in the second edition of Halsbury, Vol. 4 para. 147, p. 111 and following. The fifth edition of Tudor also collects them at p. 24. There can be no question from even a closer examination of these cases that in many instances the right to be included within the class benefiting from the gift was a right which depended upon a personal relationship to the testator or to some named individual selected by him and in view of the decision of the Court of Appeal in the *Gibson* case which I have just cited, they must, I think, in the words of Lord Greene, be treated as a body of decisions establishing good law although they are perhaps anomalous.

In the case at bar it was argued that there was no evidence before me that any of the persons whom it was intended to benefit had any need of relief from poverty. That would appear to me to be beside the point. In my view the authorities do not establish the necessity for any enquiry directed to that end. It is impossible to presume that in a group as large as that indicated by these testators that there will not be at some time or other necessity for the relief of poverty. The class is not confined to the present employees of the life insurance Company but extends to past employees and their dependents. In any group so large and variable it would not, I think, be possible to assert that poverty would not necessarily be found. The charitable objects which are roughly gathered together under the words " relief of poverty " and which include the various items originally set out in the statute of Elizabeth and those of a similar nature are included in my view in the general words used by the testators when they provided that the income from the residue of their estates were paid over for charitable purposes only. Despite the very cogent argument addressed to me on behalf of some of the next-of-kin I must find that these testators had a general charitable intent which they have expressed without any ambiguity and that included in this intent was the division of charitable trusts which

has been described as trusts for the relief of poverty. Under the exception which I have noted in the decisions the fact that the group intended to be benefited is defined by and depends upon a personal relationship either at first or second hand to the Corporation in which both the testators have been interested in their lifetime, does not preclude me from holding as I think I should under the authorities that in each of the wills before me there is a valid charitable bequest for the relief of poverty. But I must hold that the bequest is limited to this head of charitable relief. I do so realizing that the result is not a satisfactory one in the particular circumstances of this case but I am bound by the decision of the Court of Appeal of England in a matter of this sort unless there are contrary decisions of our own Court of Appeal and none have been cited to me nor have I found any. If I were free of authority I might be tempted to apply the test suggested in his footnote by the learned edition of Halsbury which I quoted earlier but I am not so free.

Question (1) (a) must therefore be answered by a declaration that the bequest made by each testator is a valid charitable bequest for the relief of poverty.

All parties to this application should have their costs of the application before me out of the estates in which they were concerned as that may be, the executors in each case to have their costs as between solicitor and client.

Pursuant to the arrangement with counsel the matter is now remitted back to Weekly Court for such other consideration as the parties may desire to have the Court give the other questions which have not yet been argued.

No. 24.

Reasons for Judgment.

IN THE SUPREME COURT OF ONTARIO.

C.A.

In re ESTATE of HERBERT COPLIN COX, deceased

and

In re ESTATE of LOUISE BOGART COX, deceased.

Copy of Reasons for Judgment of Court of Appeal (Roach, Aylesworth, and Bowlby JJ.A.), delivered 16th February, 1951.

J. D. Arnup, K.C. for Margaret J. Ardagh, one of the next-of-kin of H. C. Cox, and by order of the Court for all the other next-of-kin in the same interest, Appellant.

H. J. McLaughlin, K.C., and *W. D. S. Morden* for William Burt Shepard, one of the next-of-kin of Louise Bogart Cox, Appellant.

In the Supreme Court of Ontario, Court of Appeal.

No. 24. Reasons for Judgment. 16th February 1951— *continued.*

B. Matthews, K.C., and *W. C. Terry* for National Trust Company Limited and Alfred Herbert Cox, Administrators with the Will annexed and Trustees of the Will of Herbert C. Cox, Respondents.

Hon. S. A. Hayden, K.C. for National Trust Company Limited and Alfred Herbert Cox, Executors and Trustees of the Will of Louise Bogart Cox, Respondents.

F. T. Watson, K.C. for the Official Guardian on behalf of George Stewart Ames and Bruce Coleman Ames, Infants, and by order of the Court representing in the H. C. Cox Estate any unascertained persons not represented by Margaret J. Ardagh and in the Louise Bogart Cox Estate any unascertained persons, Respondents.

L. H. Snider, K.C. for the Public Trustee for Ontario, Respondent.

J. J. Robinette, K.C., and *J. W. Blain* for the Board of Directors of the Canada Life Assurance Company in both estates, and also in both estates for E. G. Baker appointed by order of the Court to represent the employees of the Canada Life Assurance Company, Respondents.

Roach, J.A.

ROACH J.A. :—National Trust Company Limited and Alfred Herbert Cox are the administrators with the will annexed and trustees of the estate of Herbert Coplin Cox, deceased, who died on or about September 17th, 1947. They are also the executors and trustees of the estate of Louise Bogart Cox, widow of Herbert Coplin Cox, who died on or about November 18th, 1948.

They moved the Court for its directions and advice on certain questions arising in the administration of each estate. Included in the questions submitted to the Court were the following :

(a) Whether or not the bequest provided for in Clause 16 of the will of Herbert Coplin Cox is a valid charitable bequest.

(b) Whether or not the bequest provided for in Clause 3 (F) of the will of Louise Bogart Cox is a valid charitable bequest.

The answer to other questions which were submitted would be contingent upon the Court's answer to each of the questions which I have enumerated. When the motions came on for argument before Wells J., it was agreed that argument on those other questions should be deferred pending the Court's decision on the validity of the charitable bequests, and that upon the Court having decided that question of validity, the matter should be remitted to the Weekly Court for such consideration of those other questions as the parties might desire.

The provision in each will which gives rise to this question of validity is contained in the residuary clauses and those provisions are identical. The two motions were therefore argued together.

Subject to prior directions, the trustees were directed to hold the balance of the residue of the estate upon trust as follows :

" To PAY the income thereof in perpetuity for charitable purposes only ; the persons to benefit directly in pursuance of such charitable purposes are

to be only such as shall be or shall have been employees of The Canada Life Assurance Company and/or the dependants of such employees of said The Canada Life Assurance Company ; subject to the foregoing restrictions, the application of such income, including the amounts to be expended and the persons to benefit therefrom, shall be determined by the Board of Directors of the said The Canada Life Assurance Company, as they, the said Board of Directors, in their absolute discretion, shall from time to time decide The Trust Fund is to be known as ' The Cox Foundation ' in memory of the family whose name has been so long associated with the said Company."

Wells J. held that the provision constituted a valid charitable bequest for the relief of poverty. From that decision these appeals have been taken, and they were argued together.

The Official Guardian supported the appeals.

The Public Trustee, having served notice under C.R. 497, argued that the order of Wells J. should be varied by declaring that the bequest in each will is a valid charitable bequest and is not restricted to the relief of poverty.

The board of directors of The Canada Life Assurance Company and the employees of that Company opposed the appeal.

It was said that the value of that portion of the Herbert Coplin Cox estate affected by the clause in question in his will is approximately $500,000 and of the portion of the widow's estate affected by the similar clause in her will is approximately $200,000.

If the trust in question in each estate is not a valid charitable trust, it is void as offending the rule against perpetuities and a partial intestacy will result.

The issue in each of these appeals is one of first impression in Canada. It is important, and, as will appear as I proceed with these reasons, it is difficult.

In the development of these reasons, I take as my starting point the famous statement of Lord Macnaghten in *The Commissioners for Special Purposes of the Income Tax* v. *Pemsel*, [1891] A.C. 531 at 583. That statement is as follows :

" ' Charity ' in its legal sense comprises four principal divisions : trusts for the relief of poverty ; trusts for the advancement of education ; trusts for the advancement of religion ; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads. The trusts last referred to are not the less charitable in the eye of the law, because incidentally they benefit the rich as well as the poor, as indeed, every charity that deserves the name must do either directly or indirectly."

A proposition of law for which there is ample authority carries me the next step. That proposition is as follows,—that a trust cannot be a valid charitable trust within any of the four divisions described by Lord Macnaghten unless it is for a public purpose, that is to say, unless it is for the benefit of the community or an appreciably important class of the community.

In *Verge* v. *Somerville*, [1924] A.C. 496, Lord Wrenbury, in delivering the judgment of their lordships in the Privy Council, said, at p. 499

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" To ascertain whether a gift constitutes a valid charitable trust so as to escape being void on the ground of perpetuity, a first inquiry must be whether it is public—whether it is for the benefit of the community or of an appreciably important class of the community. The inhabitants of a parish or town, or any particular class of such inhabitants, may, for instance, be the objects of such a gift, but private individuals, or a fluctuating body of private individuals, cannot."

In *Williams' Trustees* v. *Inland Revenue Commissioners*, [1947] A.C. 447, Lord Simonds, with whom Viscount Simon and Lords Wright, Porter and Normand agreed, at p. 457, said :

" It is not expressly stated in the preamble to the statute " (the Statute of Elizabeth, 43 Eliz., c. 4) " but it was established in the Court of Chancery, and, so far as I am aware, the principle has been consistently maintained, that a trust in order to be charitable must be of a public character. It must not be merely for the benefit of particular private individuals ; if it is, it will not be in law a charity though the benefit taken by those individuals is of the very character stated in the preamble."

He then gives the rule as stated by Lord Wrenbury in *Verge* v. *Somerville* (*supra*) which I have quoted, and continues :

" It is, I think, obvious that this rule, necessary as it is, must often be difficult of application and so the courts have found. Fortunately perhaps, though Lord Wrenbury put it first, the question does not arise at all, if the purpose of the gift whether for the benefit of a class of inhabitants or of a fluctuating body of private individuals is not itself charitable."

This necessity for public benefit is again discussed in *National Anti-Vivisection Society* v. *Inland Revenue Commissioners*, [1948] A.C. 31. At p. 42, Lord Wright said :

" Even societies coming within the first three heads of Lord Macnaghten's classification would not be entitled to rank as legal charities if it was seen that their objects were not for the public benefit.

* * * * *

The test of benefit to the community goes through the whole of Lord Macnaghten's classification, though as regards the first three heads, it may be prima facie assumed unless the contrary appears."

At p. 53, Lord Porter quotes from Lord Macnaghten in the *Pemsel* case (*supra*) stating the four heads of charity, and then continues :

" From this language it might well have been argued that trusts for any of the first three objects were charitable whether they were beneficial to the community or not, but that inclusion in the fourth class is only permissible, if such benefit can be shown. I cannot, however, find that such a contention has ever been put forward. It was expressly repudiated by both sides in the present case and rejected by Russell J. as he then was in *Hummeltenberg's* case ([1923] 1 Ch. 237, 240). One must take it therefore that in whichever of the four classes the matter may fall, it cannot be a charity unless it is beneficial to the community or to some sufficiently defined portion of it."

There is an exception to that rule of public benefit. Cases coming within that exception are what have come to be known as " the poor relations cases." They are referred to by Lord Greene M.R. in *In re Compton ; Powell* v. *Compton and Others*, [1945] 1 Ch. 123 at 137 et seq. Cases coming within that exception are all derived from the decisions in *Isaac* v. *De Friez*, 2 Amb. 595, and *Attorney-General* v. *Price*, 17 Ves. 371. In the former, the gifts were as follows : 1st,—a gift of two annuities to the poorest relations of the testator and of his wife ; 2nd,—a gift of income to one poor relation of the testator " for a portion in the way of marriage and putting him or her out in the world" ; 3rd,—a similar gift of income to one poor relation of his wife. In the latter, the gift was in favour of the testator's " poor kinsmen and kinswomen and their offspring and issue which shall dwell in the County of Brecon."

In the first of those cases, the gifts were held to be valid charitable gifts, but no reasons were given for the decision. In the second of those cases, the gifts were held to be valid charitable gifts apparently on the authority of the decision in the earlier case.

Of those cases and others like them, Lord Greene in *In re Compton*, at p. 139 said this :

" If the question of the validity of gifts of this character had come up for the first time in modern days I think that it would very likely have been decided differently on the ground that their purpose was a private family purpose, lacking the necessary public character, but it is in my view quite impossible for this court to overrule these cases. Many trusts of this description have been carried on for generations on the faith that they were charitable, and many testators have no doubt been guided by these decisions. The cases must at this date be regarded as good law, although they are, perhaps, anomalous."

The question of whether an alleged charitable bequest was for the benefit of the public or an appreciably important section of the public, on the one hand, or for a group of private individuals, on the other, engaged the attention of the Court in *In re Drummond ; Ashworth* v. *Drummond*, [1914] 2 Ch. 90. In that case certain shares were bequeathed to trustees upon trust to pay the income therefrom to the directors of a commercial company " for the purposes of contribution to the holiday expenses of the workpeople employed in the spinning department of the said company in such manner as a majority of the directors should in their absolute discretion think fit " and the directors were given the power to " divide the same equally or unequally between such workpeople."

Eve J. in his reasons, commencing at p. 95, refers to two arguments which were presented to him : 1st,—That although there was nothing expressed in the bequest as to the poverty of the recipient or as to his or her inability to take a holiday without the aid of the contribution thereby contemplated, it ought to be inferred that there was imposed on the directors a trust so to exercise their discretion as to make contributions only in those cases in which the employee would have been unable to take a holiday or to contribute to the holiday expense fund without the assistance

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of the contribution, and that the whole class, having regard to their wages, was a class properly described as poor people within the Statute of Elizabeth. 2nd,—That the gift was, in any event, a good charitable gift because it was for general public purposes.

On that first argument Eve J. at p. 96, said this :

" . . . there is nothing in this bequest, or in the terms in which the discretion is given to the directors, which imposes on them the obligation of inquiring into the ability of the participants to provide themselves with a holiday without the assistance, or limits their powers of contribution to cases where no holiday would be possible without such contribution. Nor can I judicially hold that a large body of workpeople working at what does indeed seem to be a very small wage can properly be regarded as being in such a condition of poverty as to be poor people within the statute."

On the second argument he said :

" This is not a trust for general public purposes ; it is a trust for private individuals, a fluctuating body of private individuals it is true, but still private individuals, and that being so it is outside the line of authorities cited, and not being for public purposes it is not charitable, but is void as infringing the rule against perpetuities."

That same question of public benefit again arose in *In re Compton* (*supra*). The decision in that case laid down a rule for the determination of that question, which has since been approved by the House of Lords in a case to which I will later refer. The facts in *In re Compton* were as follows :

" A testatrix by her will provided : ' . . . the money . . . is to be . . . invested . . . under a trust forever . . . for the education of C. and P. and M. children but C. and P. children are to take the preference as scholarships for the time thought best by the trustees not over the age of twenty-six years. It is not to be used as a pension or income for anyone and is to be held as scholarships at the pleasure of the trustees. It is to be used to fit the children to be servants of God serving the nation not as students for research of any kind '."

The C. and P. and M. children were defined as the lawful descendants of three named persons. This was an appeal from a decision which held that the trust was a valid charitable bequest. Lord Greene M.R. reading the judgment of the Court, at p. 139 quoted from Lord Wrenbury in *Verge* v. *Somerville* the portion of the judgment which I earlier quoted, and continued :

" The proposition is true of all charitable gifts and is not confined to the fourth class in Lord Macnaghten's well-known statement in *Pemsel's* case. It does not, of course, mean that every gift that tends to the public benefit is necessarily charitable. What it does mean is that no gift can be charitable in the legal sense unless it is of the necessary public character."

Lord Greene declined to attempt to define what is meant by a section of the public, but at p. 131 he described those who do not come within it thus :

" I come to the conclusion, therefore, that on principle a gift under which the beneficiaries are defined by reference to a purely personal relationship to a named propositus cannot on principle be a valid charitable gift. And this, I think, must be the case whether the relationship be near or distant, whether it is limited to one generation or is extended to two or three or in perpetuity. The inherent vice of the personal element is present however long the chain and the claimant cannot avoid basing his claim on it."

In re Hobourn Aero Components Limited's Air Raid Distress Fund, Ryan v. *Forrest*, [1946] 1 Ch. 194, had to do with a war emergency fund which during the war years from 1940 to the end of 1944 had been created by collections made weekly from the employees of a Company operating three factories, those collections at first having been made informally and later by agreed deductions from the employees' wages. The money was for some time expended on comforts or money payments for ex-employees serving abroad or at home. After September, 1940, it was decided to use the collected funds also to relieve, and after January, 1944, solely to relieve, cases of employees who had suffered damage and distress from air raids. Claims were only entertained from persons who had contributed to the fund, but no means test was imposed on any application. The fund having been closed, the question arose as to how the surplus moneys were to be dealt with. Cohen J. held that there was no public charitable purpose in regard to the fund, and his decision was affirmed on appeal. At p. 200, Lord Greene M.R. confirms what he said in *In re Compton*, that a trust for the benefit of employees of a business is a purely private and personal trust, and points out that in his opinion the principle there stated applies whether the fund was put up by the beneficiaries themselves or by outside persons.

In the recent case of *Oppenheim* v. *Tobacco Securities Trust Co. Ltd. and Others*, [1951] All E.R. 31, the income of the trust premises was to be applied " in providing for or assisting in providing for the education of children of employees or former employees of B.A. Co. Ltd. . . . or any of its subsidiaries or allied companies in such manner and according to such schemes or rules or regulations as the acting Trustees shall in their absolute discretion from time to time think fit and also at the discretion from time to time of the acting Trustees to apply all or any part of the corpus of the said trust for the like purposes." The House of Lords (Lord MacDermott dissenting) held that the common employment of the beneficiaries did not constitute them a section of the community so as to give the trust the necessary public character to render it charitable and there being for this purpose no distinction between the employees and their children, the gift was void for perpetuity. The rule laid down in *In re Compton* was expressly approved and applied.

That was an educational trust and their Lordships left undecided the question whether that rule should be applied to trusts for the relief of poverty among a group of individuals who are defined by reference to a personal relationship to a designated propositus or several designated propositi.

In the Supreme Court of Ontario, Court of Appeal.

No. 24. Reasons for Judgment. 16th February 1951.

Roach, J.A. —*continued.*

The question which their Lordships left undecided is the issue now before this Court. That issue may be otherwise stated thus—Does the relief of poverty among a group of individuals so defined constitute a second exception to the rule of public benefit ?

There are decisions in England which simply cannot be reconciled with the rule as laid down in *In re Compton* and which support the argument that in England there is such an exception.

The first is *Spiller* v. *Maude* (1881), 32 Ch. D. 158. In that case the funds were accumulated by subscriptions from actors and actresses who were members of a theatrical society, and by donations from non-members. The rules and regulations governing the disposition of the funds declared that they were solely for the benefit of the society and that no person could be admitted to membership except an actual performer on the stage. They provided for an allowance for the funeral expenses of any contributor dying in indigent circumstances ; for the relief of orphan children of contributors ; for the supply of medical advice and medicines to sick contributors unable to pay ; and for granting annuities to contributors on becoming incapacitated, either by age, accident or other infirmity, from exercising the duties of his or her profession and not possessing an independent income of more than £50 per annum. Jessel M.R. held that, under the rules of the society, poverty was clearly an ingredient in the qualifications of the members who were to receive the benefits of the society, and that the whole fund was dedicated to charitable purposes.

Referring to that decision, Lord Greene M.R. in *In re Hobourn Aero Components Limited's Air Raid Distress Fund, Ryan* v. *Forrest* (*supra*) said :

" I must confess, speaking for myself, that this seems to me to be a very extreme decision, because the whole arrangement was of a personal nature. However, it was saved by the fact of poverty."

Then there is the case of *In re Gosling ; Gosling* v. *Smith*, 48 W.R. 300. In that case, the deceased by a codicil to his will gave a gift of certain annuities to form a fund to be called the " superannuation fund " for the purpose of pensioning off the old and worn-out clerks of the firm of Gosling and Sharpe of which the testator was a member. It was held that this constituted a good charitable bequest. Byrne J. at p. 300, said :

" I think, moreover, having regard to the phrase ' pensioning off ' and to the frame of the gift, that poor clerks of the firm and those unable properly to provide for themselves and their families are intended to be benefited . . . The fact that the section of the public is limited to persons born or residing in a particular parish, district or county, or belonging to or or connected with any special sect, denomination, guild, institution, firm, name or family, does not of itself render that which would be otherwise charitable void for lack of a sufficient or satisfactory description or take it out of the category of charitable gifts."

Then there is the more recent decision in the Court of Appeal in *Gibson and Another* v. *South American Stores* (*Gath & Chaves*) *Ltd.*, [1950] 1 Ch. 177. In that case, a company established a fund which it vested in

trustees for the benefit of all persons who in the opinion of its London board of directors "are or shall be necessitous and deserving and who for the time being are or have been in the company's employ . . . and the wives, widows, husbands, widowers, children, parents and other dependants of any person who for the time being is or would, if living, have been himself or herself a member of the class of beneficiaries." The English Court of Appeal, per Evershed M.R. stated the question there before it thus :

" Under the law as it has now been established, and in the light of several recent decisions, both in this court and in the House of Lords, is a trust for a class of poor persons defined by reference to the fact that they are employed by some person, firm, or company, a good charitable trust, or does it fail of that qualification through the absence of the necessary public element ? "

Having stated the question thus, he continued :

" There is, I think, no doubt that the emphasis which has been placed in recent years on the need for that public characteristic had to some degree been lost sight of in earlier cases, and its emphatic affirmation (the last case I have in mind is *Gilmour* v. *Coats* in the House of Lords) undoubtedly raises the question whether certain decisions of courts of first instance on trusts in favour of poor persons of various categories are now consistent with the principles which have been stated."

The court then referred to the apparent conflict between the decisions in *In re Drummond, In re Compton* and *In re Hobourn Aero Components Ltd.*, on the one hand, and in *Spiller* v. *Maude* and *In re Gosling* and *In re Buck* (a case similar to the other two), on the other. It was spared the task of doing more than pointing out that conflict because it felt itself concluded by its own decision in an unreported case of *In re Sir Robert Laidlaw's Trusts* decided in 1935. Loyally following that decision, it held that the trust was a valid charitable trust.

At p. 195, Evershed M.R. said :

" If in this or some other case the question of the charitable qualification of trusts in favour of employees of companies or businesses (which under modern conditions might include such classes as the whole of the coal miners, or the whole of the railway servants of England) arose, the House of Lords might well consider some new formulation of the proper principle applicable."

Earlier I said that their Lordships in the House of Lords in *Oppenheim* v. *Tobacco Securities Trust Co., Ltd.* (*supra*), in approving the test as laid down by Lord Greene M.R. in *In re Compton* (*supra*), left undecided the question whether that test was properly applicable to those cases in which, though the beneficiaries constituted a group of private individuals as distinguished from the public, the attribute of poverty was a necessary qualification to participation in the benefits. Lord Morton of Henryton in his reasons, at p. 38, refers to the decision of the Court of Appeal in the *Gibson* case, a case which he says might possibly be described as a descendant of the " poor relations " cases. He points out that in that case and in *Spiller*

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v. *Maude, In re Gosling, In re Buck* and *In re Laidlaw's Will Trusts* the element of poverty of the beneficiaries was present, and therefore that those cases came within the first of the four classes of charitable trusts laid down by Lord Macnaghten whereas the case then before him came within the second class. Then he continued :

" I think that for this reason your Lordships are of opinion that it is neither necessary nor desirable to express any view on the present occasion on the cases to which I have just referred. I am content to fall in with this opinion, only observing that they may require careful consideration in this House on some future occasion."

Lord Simonds, in his reasons, points out that the element of poverty was not a necessary qualification of the beneficiaries and that their only qualification was that they be the children of persons in common employment. At p. 35, he refers to the so-called " poor relations cases " and says :

" I do so only because they have once more been brought forward as an argument in favour of a more generous view of what may be charitable. It would not be right for me to affirm or to denounce or to justify these decisions. I am concerned only to say that the law of charity, so far as it relates to ' the relief of aged, impotent and poor people ' (I quote from the Charitable Uses Act 1601) and to poverty in general, has followed its own line, and that it is not useful to try to harmonise decisions on that branch of the law with the broad proposition on which the determination of this case must rest. It is not for me to say what fate might await those cases if in a poverty case this House had to consider them . . ."

The trusts with which we are here concerned are " for charitable purposes only." That phrase necessarily includes all legal charities. The law is now definitely settled by as high authority as the House of Lords,—the *Oppenheim* case—that to the extent that those purposes include the charities coming within the second, third and fourth divisions of charities as classified by Lord Macnaghten these trusts are not valid charitable trusts because the beneficiaries are limited to a group of individuals who are defined by reference to propositi named by the donor in each case. Wells J. reached that conclusion but he held that they were valid charitable trusts limited to the relief of poverty among the beneficiaries. In my opinion they are not legal charitable trusts even for that purpose.

Clearly they do not come within the " poor relations cases." Those cases constitute a class of anomalous decisions which are now regarded as good law only because of their respectable antiquity.

In the *Oppenheim* case Lord Morton of Henryton suggested that such a case as the *Gibson* case—the case at bar resembles it to the extent that the purposes of the trusts here in question include the relief of poverty—might be described as a descendant of the " poor relations cases." In this Province, at least, and I should think also in England the " poor relations cases " as a class constitute a closed class and no other case not entirely identical with the poor relation cases should be legally adopted into that class.

Since that class is closed then the trusts here in question can be valid charitable trusts only if there is a second exception to the general rule, namely, trusts for the relief of poverty among a group of private individuals who are chosen by the donor by reason of another type of personal relationship, namely, their relationship as employees or dependants of employees of a named employer.

In my opinion this Court should hold that in this Province there is not such an exception to the general rule. The test as laid down in *In re Compton* and approved and applied in the *Oppenheim* case to an educational trust should also be the test to be applied in a trust for the relief of poverty. I can see no reason why it should be applied in the one but not in the other.

Counsel for the Respondents opposing these appeals referred to the statement of Lord Simonds in *Gilmour* v. *Coates*, [1949] A.C. 426 at 449 in support of their argument that there might be one test applied to an educational trust and another to a trust for the relief of poverty. Lord Simonds said :—

" But it is, I think, conspicuously true of the law of charity that it has been built up, not logically, but empirically. It would not, therefore, be surprising to find that, while in every category of legal charity some element of public benefit must be present, the Court had not adopted the same measure in regard to different categories, but had accepted one standard in regard to those gifts which are alleged to be for the advancement of education and another for those which are alleged to be for the advancement of religion, and it may be yet another in regard to the relief of poverty. To argue by a method of syllogism or analogy from the category of education to that of religion ignores the historical process of the law."

That statement, as I understand it, does not support counsel's argument. I understand Lord Simonds to be there pointing out that in the historical process of the law of charity there has been divergence in the treatment of allegedly charitable gifts in determining what might be called their potential quality for public benefit. In that historical process I know of no divergence from the principle that the beneficiaries of the gift must be the community or an appreciably important class of community except the divergence found in the " poor relations cases." There has been of course the divergence found in those cases which I have earlier grouped commencing with *Spiller* v. *Maude* and ending with the *Gibson* case. The decisions in those cases are not binding on this Court and I prefer not to follow them.

I come back to *Verge* v. *Somerville* (*supra*) and the statement of Lord Wrenbury that the first inquiry to make must be whether the gift is for the benefit of the public. In making that inquiry you do not look at the nature or quality of the gift, that is to say, whether it is for the relief of poverty, or for the advancement of education or for the advancement of religion. You look only at the description of the beneficiaries.

In the Supreme Court of Ontario, Court of Appeal.

No. 24. Reasons for Judgment. 16th February 1951.

Roach, J.A. —*continued.*

My conclusion therefore is that these appeals should be allowed because these trusts are not trusts for general public purposes; they are trusts for private individuals, a fluctuating body of private individuals but still private individuals. Because they are not for public purposes they are not charitable and are therefore void as offending the rule against perpetuities.

I would allow the costs of all parties on each appeal to be paid out of the fund in question in each estate.

AYLESWORTH J.A. } I agree.
BOWLBY J.A. }

In the Supreme Court of Canada.

No. 25. Reasons for Judgment. 22nd December 1952.

(*a*) Kerwin, J., concurred in by Taschereau, J.

No. 25.

Reasons for Judgment.

IN THE MATTER of THE ESTATE of HERBERT COPLIN COX
and
IN THE MATTER of THE ESTATE of LOUISE BOGART COX

Coram: KERWIN, TASCHEREAU, RAND, KELLOCK, ESTEY, CARTWRIGHT and FAUTEUX, JJ.

The Judgment of KERWIN and TASCHEREAU, JJ. was delivered by :—

(*a*) KERWIN, J.

The Will of the late Herbert Coplin Cox directs his Trustees to hold the residue of his estate upon trust as follows :—

> " To PAY the income thereof in perpetuity for charitable purposes only; the persons to benefit directly in pursuance of such charitable purposes are to be only such as shall be or shall have been employees of The Canada Life Assurance Company and/or the dependents of such employees of said The Canada Life Assurance Company; subject to the foregoing restrictions, the application of such income, including the amounts to be expended and the persons to benefit therefrom, shall be determined by the Board of Directors of the said The Canada Life Assurance Company, as they, the said Board of Directors, in their absolute discretion shall from time to time decide. The Trust Fund is to be known as ' The Cox Foundation ' in memory of the family whose name has been so long associated with the said Company."

The first point to be determined is the proper construction of this clause. If it consisted merely of the opening words " To pay the income thereof in perpetuity for charitable purposes only " that would be a good charitable trust, and it is therefore argued that while in the latter part of the clause the only persons to benefit " directly " from the application of the income are the present and former employees (and their dependents) of The Canada Life Assurance Company, there is an area of indirect benefit untouched by such latter part but which falls within the opening words. As against this it might be suggested that, if that were so and assuming the latter direction would not fall within the scope of legal charity, the funds could be applied for either purpose. It might be also suggested that, in that event, the present case could not be distinguished from those where the fund could be diverted in the trustees' discretion to an object totally uncharitable in the legal sense with the result that the whole bequest would be void ; *Hunter* v. *A.G.* (1889) A.C. 309 : *Chichester Diocesan Fund and Board of Finance* v. *Simpson* (1944) A.C. 241.

The point need not be determined on this appeal because the word " directly " does not operate in the manner suggested as I construe the clause to mean that the charitable purposes for which the income is to be paid in perpetuity are the employees and dependants. Members of that class must of necessity benefit directly as a trust for indirect benefits would be too vague for the Court to enforce. The word " directly " therefore adds nothing. On that construction it is not a case of there being a charitable intention with merely the particular mode of application failing for illegality or some other reason, and the cases cited on that branch of the matter have no application.

Upon a consideration of the numerous decisions, it is clear that, if the objects of a trust are not charitable in themselves, it is not a charitable trust, and the fact that the donor thought his gift charitable is not relevant to the issue : Tudor on Charities, 5th edition, page 8. The circumstance, therefore that the testator directed his trustees to pay the income for charitable purposes only does not determine the matter when, as I believe, the only purposes to which the moneys may be applied are not charitable.

It has now been settled that the element of public benefit is essential for all charities no matter in which of Lord Macnaghten's classifications in *Income Tax Commissioners* v. *Pemsel* (1891) A.C. 531, they fall. The only exception is the anomalous case of trusts for the relief of poverty and, here, that condition does not exist. Mr. Robinette contended that, granted the words " to pay the income thereof in perpetuity for charitable purposes only " would, by themselves, establish a valid charitable trust, it should be held that the succeeding part of the clause applied only to indigent or necessitous persons. However, this succeeding part permits the Board of Directors to choose employees and dependants who are not poor and the argument fails.

As pointed out by Lord Simonds in *Oppenheim* v. *Tobacco Securities Trust Co., Ltd.* (1951) A.C. 297 at 306, when the trust is for the benefit of a class of persons, the question is whether that class can be regarded as such a

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(a) Kerwin, J., concurred in by Taschereau, J.— *continued.*

" section of the community " as to satisfy the test of public benefit. He points out that these words, " section of the community," have no special sanctity, " but they conveniently indicate first, that the possible (I emphasize the word ' possible ') beneficiaries must not be numerically negligible, and secondly, that the quality which distinguishes them from other members of the community, so that they form by themselves a section of it, must be a quality which does not depend on their relationship to a particular individual. It is for this reason that a trust for the education of members of a family or, as *In re Compton*, of a number of families cannot be regarded as charitable. A group of persons may be numerous but, if the nexus between them is their personal relationship to a single propositus or to several propositi, they are neither the community nor a section of the community for charitable purposes."

The House of Lords approved the judgment of Lord Greene as Master of the Rolls in *In re Compton* (1945) Ch. 123, and of Lord Greene and of Lord Justice Morton (as he then was) in *In re Hobourn Aero Components Ltd.'s Air Raid Distress Fund* (1946) Ch. 194. The decision in *In re Drummond* (1914) 2 Ch. 90 was also approved. That decided that trusts for the benefit of employees past, present or future of an employer are not public charities. *In re Rayner* (1889) L.J. (Ch) 369 ; 122 L.T.R. 577 : was regarded as of doubtful authority. As pointed out by Lord Morton of Henryton, the Court of Appeal in *Gibson* v. *South American Stores (Gath and Chaves) Limited* (1950) Ch. 17, felt obliged because of the rule of *stare decisis* to follow an unreported decision of its own in 1935, *In re SirRobert Laidlaw*, and to hold that a trust was valid which was for all persons who in the opinion of a Board of Directors are, or should be necessitous and deserving, and who had been in the employ of the Company or a subsidiary thereof, and dependants thereof. The element of poverty was present and it was held to be a valid charitable trust notwithstanding the limited nature of the class of beneficiaries. I have already pointed out that the element of poverty does not enter into the present matter and, in my opinion, the decision in *Oppenheim* is decisive.

It is decisive notwithstanding that at the date of the application of Wells J. the persons who would answer the description of employees, past or present, of the Company, and dependants of such employees, were estimated to be in excess of thirty thousand, and that some of these were in such circumstances as to require financial aid. Even if those facts satisfied the first test of a " section of the community," the second requirement is a quality which does not depend on the relationship of the members thereof to a particular individual. When the *Hobourn* case came before the Court of Appeal, it was contended that the observations of that Court in *Compton* that a trust for the benefit of employees of a business was a purely private and personal trust were dicta only. At page 200, Lord Greene stated his belief in the correctness of those observations, and at page 208, Lord Justice Morton said quite plainly that he entirely approved of the *Drummond* decision. In the *Hobourn* case the Court was not dealing with a fund put up by outside persons but, at page 200, Lord Greene stated that " even if

we were, I should on the authority of *In re Compton* feel constrained to hold that such a fund would not be a good charity." Lord Justice Morton was of the same opinion and Lord Justice Somervell agreed. In view of the approval by the House of Lords of the decisions in *Compton* and *Hobourn*, the matter would appear to be concluded.

It was argued that the law should not be the same for Ontario but even if the decision in *Oppenheim* had never been given, I would hold that its basis, as found in the judgments of Lord Greene in *Compton* and of Lord Greene and of Lord Justice Morton in *Hobourn*, is a complete and satisfactory method of disposing of the present issue. I adopt, if I may, the words of Lord Simonds in *Oppenheim*: "It must not I think be forgotten that charitable institutions enjoy rare and increasing privileges and that the claim to come within that privileged class should be clearly established." Those privileges, it might be added, are, of course, not confined to the receipt of benefits in perpetuity under a will.

(*a*) Kerwin, J., concurred in by Taschereau, J.— *continued.*

The appeal should be dismissed subject to a variation to which Mr. Snider drew our attention. The Testator's widow survived her husband, and paragraph 5 of the judgment of Wells J., as inserted in the Court of Appeal order, should be stricken out and the following substituted therefor:

> "5. And there therefore being an intestacy as to such balance of the Testator's residuary estate, THIS COURT DOTH FURTHER ORDER that it be referred to the Master of this Court at Toronto to determine and report who were entitled thereto at the date of the death of the Testator."

The costs of all parties should be paid out of the estate, those of the surviving administrator with the will annexed and trustee of the Testator's will and codicil as between solicitor and client.

The residuary clause in the will of the Testator's widow is the same as in her husband's and the same order should, therefore, go in the appeal in connection with her estate except that there is no necessity of any alteration in the order of the Court of Appeal.

(*b*) RAND, J.: (*b*) Rand, J.

I agree with the construction placed on the residuary clause by my brother Cartwright, that it declares a general charitable intent and impresses upon the residue a trust for that purpose; I agree, also, that the word "directly" is significant, that it restricts direct benefits to those mentioned and implies that all other benefits are to be indirect; I agree, finally, that the benefit to the specified class violates the rules laid down requiring that public quality in the recipients defined by the cases mentioned. It follows that only by indirect benefits to individuals, as by grants to charitable agencies or objects such as libraries, hospitals, schools, churches, works or institutions, are the funds to be dealt with by the Trustees.

But I am unable to concur in the view that by reason of the failure of the benefits to the employees of the Assurance Company, the appointment

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(b) Rand, J. —*continued.*

of the Board of Directors as the body to determine the distribution of the funds, must be taken also to fail. The absolute discretionary appropriation to charity of the property generally was conferred upon the Board; benefits might or might not be awarded to the employee group; they might from time to time be bestowed exclusively on other objects. The reasons leading the Testator to select the Board would, from the evidence, seem to be obvious. He, himself, as well as others of the Cox family, had long been associated with the Company, and he had come to know and, undoubtedly, appreciate the competency and character of those who constituted its Board. It may be also that that long family connection had, directly or indirectly, in some degree, enabled the accumulation of the wealth of which he was disposing, and it was an easy step to associating the Company with its distribution as a public benefaction.

In these circumstances I cannot take the designation of the Board to have been bound up with the intended benefits to the employees. The discretion extended over the whole charitable field; and I find nothing to indicate that had there not been the special provision for the employees, that discretion would have been placed elsewhere. I should think, on the contrary, that, in his opinion, the perpetuation of the family name in the maintenance of a charitable Foundation would be uniquely served by such intimate office on the part of the Board.

I would therefore declare the bequest in both testaments to be a valid gift to charity, the income to be applied by the trustees to such charitable purposes with indirect personal benefits only as the Board in their discretion think proper.

The costs of all parties should be paid out of the estates as proposed.

(c) Kellock, J. concurred in by Taschereau, and Fauteux, JJ.

The Judgment of TASCHEREAU, KELLOCK and FAUTEUX, JJ. was delivered by:—

(c) KELLOCK, J.

As the question arising in these appeals is common to both, it will be convenient to deal with the will of the male deceased. The relevant paragraph reads as follows:

> "To pay the income thereof in perpetuity for charitable purposes only; the persons to benefit directly in pursuance of such charitable purposes are to be only such as shall be or shall have been employees of The Canada Life Assurance Company and/or the dependents of such employees of said The Canada Life Assurance Company; subject to the foregoing restrictions, the application of such income, including the amounts to be expended and the persons to benefit therefrom, shall be determined by the Board of Directors of the said The Canada Life Assurance Company, as they, the said Board of Directors, in their absolute discretion shall from time to time decide. The Trust Fund is to be known as 'The Cox Foundation' in memory of the family whose name has been so long associated with the said Company."

Wells J., the judge of first instance, construed this disposition as a good charitable bequest confined to the relief of poverty among the class described. The Court of Appeal appears to have entertained the same view with respect to the question of construction, but reversed the judgment of Wells J. on the ground that a trust for the relief of poverty confined to such a class was not a valid trust. In the view of Roach J., who delivered the judgment of the court, such a trust lacked the necessary public character.

The Appellant, while adopting the construction of the will accepted in the courts below, contends that the Court of Appeal erred in its view of the law. Appellant contends further that, while the class defined by the testator comprises the only persons who are to benefit " directly " from the trust, the testator has expressed a general charitable intention and has left his gift to operate in the field of " indirect " benefit.

In its popular sense, " charity " does not coincide with its legal meaning but, as stated by Lord Macnaghten in *Pemsel's* case, 1891 A.C. 531, adopting the argument of Sir Samuel Romilly in *Morice* v. *Bishop of Durham*, 10 Vesey 522,

> " ' Charity ' in its legal sense comprises four principal divisions : trusts for the relief of poverty ; trusts for the advancement of education ; trusts for the advancement of religion ; and trusts for other purposes, beneficial to the community, not falling under any of the preceding heads."

In *Verge* v. *Somerville*, 1924 A.C. 496, Lord Wrenbury said at p. 499 :

> " To ascertain whether a gift constitutes a valid charitable trust so as to escape being void on the ground of perpetuity, a first inquiry must be whether it is public—whether it is for the benefit of the community or of an appreciably important class of the community. The inhabitants of a parish or town, or any particular class of such inhabitants, may, for instance, be the objects of such a gift, but private individuals, or a fluctuating body of private individuals, cannot."

Lord Greene M.R. in *Compton's* case (1945) 1 A.E. 199 at 201, said with reference to the above proposition that it is true with respect to all charitable gifts and is " not confined to the fourth class in Lord Macnaghten's well known statement in *Pemsel's* case."

In the submission of the Appellant, any trust for the relief of poverty creates, per se, a public benefit. Accordingly, while admitting that the trust here in question cannot, on the law as stated by Lord Wrenbury, be upheld as applied to the last three heads of Lord Macnaghten's classification, the Appellant submits that if the language here in question may be construed as the Appellant seeks to construe it, the trust is valid with respect to the first head, namely, for the relief of poverty within the group defined by the testator.

The initial question, therefore, is as to the true construction of the language which the testator used. Appellant says that the words " for

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(c) Kellock, J. concurred in by Taschereau and Fauteux, JJ.— *continued.*

charitable purposes only " are to be construed as though the testator had said, " for such legal charitable purposes as the law recognizes " within the class of beneficiaries defined.

As I have said, this construction of the testator's language found acceptance in the courts below, but I am regretfully unable to come to that conclusion. The word " charitable," construed in its legal sense, comprises all of the four heads already mentioned, and I find nothing in the language used which permits me to eliminate therefrom any of them. To put the matter more plainly, I see no escape from reading the words used as though the testator had set out seriatim the said four heads. This being so, the testator has empowered his trustees, even of the Appellant's thesis, to apply the subject matter of the trust for charitable and non-charitable purposes, thereby empowering them to devote the whole, if they please, to the non-charitable. The " application of such income " is left entirely to the discretion of the directors of the Company and the bequest is therefore void ; *Morice* v. *Bishop of Durham*, 10 Vesey 521 at 541. In my view, therefrom, the basis of the argument of the Appellant fails on this branch of the case.

In 1938 when the will here in question was executed, a testator might not unreasonably have thought, in the state of the authorities at that time, that a valid trust for purposes embracing all of the four heads of charity could be created for the benefit of a class such as the employees of a particular company and their dependents. In 1881 the case of *Spiller* v. *Maude*, 32 Ch. 158, had come before Jessel M.R. That case dealt with a fund derived from subscriptions made by members of a company of actors and actresses for the benefit of the members and their dependents. The learned Master of the Rolls came to the conclusion that poverty was clearly an ingredient in the qualification of members who should receive benefits and that the fund was, accordingly, charitable. Again, in 1896, in *In re Buck* (1896) 2 Ch. 727, Kekewich J. decided similarly with respect to the funds of a Friendly Society. In 1900, also in *In re Gosling*, 48 W.R. 300, Byrne J. upheld as a good charitable trust, a fund for the purpose of pensioning off old and worn-out clerks of a paticular firm.

In 1914, the case of *In re Drummond* (1914) 2 Ch. 90, came before Eve J., who held that a trust for the purpose of providing holiday expenses for the employees of one department of a company was invalid as not being a trust for public purposes but for private individuals. But, in 1920 the same learned judge, in *Re Rayner*, 122 L.T.N.S., 577, had to consider the validity of a trust for the education of children of the employees of a particular company. Eve J. distinguished his decision in *Drummond's* case and held the trust then before him valid, being of opinion that the class of beneficiaries was sufficiently defined as a section of the public to support the gift. Although Lord Wrenbury's judgment in *Verge* v. *Somerville* was delivered in 1924, it was not until 1945 that the decision in *Rayner's* case was overruled by the Court of Appeal *In re Compton, supra.* In the meantime, the will of the testator here in question was executed.

By 1948 when the will of the testatrix was executed, *In re Hobourn*, 1946, Ch. 194, had been decided, although *Gibson* v. *South American Stores*

(1950) 1 Ch. 177 and *Oppenheim* v. *Tobacco Securities Trust* (1951) A.C. 297, had not. However, whatever may have been the view of the professional advisers of either the testator or the testatrix when the respective wills now in question were executed, the Appellant does not argue now that the trusts here in question can be supported in law except as trusts for the relief of poverty. For the reason already given, the necessary foundation for such an argument does not exist upon the construction of the language used by the testators which, in my view, is the proper construction.

With respect to the argument that there is a whole field of " indirect " benefit left open within which the trust may validly operate, we have not the benefit of the view of either of the courts below, as this contention was for the first time put forward in this court. This argument is, of course, founded upon the use of the word " directly."

It is contended that while the testator has prohibited the application of any part of the income for the *direct* benefit of an individual who does not fall within the specified class, the will permits the income to be applied to such objects as, for example, a hospital, as it is said, such a gift involves only indirect benefit, presumably, to the patients.

Had the testator stopped with the words " The Canada Life Assurance Company " where those words are used for the second time in the first limb of the paragraph, there might be considerable force in this contention. The testator, however, did not stop there, but went on to prescribe in the second limb that, " subject to the foregoing restrictions," the application of the income, including

(a) " the amounts to be expended " and

(b) " the persons to benefit therefrom "

(and here the word " directly " does not occur)

should be determined by the Board of Directors.

It is to be observed that while it is the trustees who are to disburse the income, it is the directors who are to control the application of the payments. The word " persons " in (b) above certainly does not exclude individuals. It includes them. If, therefore, according to the Appellant's contention, no individual may take a direct benefit the directors could never, as the testator directs, determine the " persons " to benefit but only at best, the " classes of persons " who might be served by any particular institution or organization to which they might direct payments to be made. The Canada Life employees and their dependents are themselves a class but the testator has declared that even among that class, the selection of the actual beneficiaries is a matter for the directors.

Having imperatively prescribed that the " persons " to benefit *shall* be determined by the directors, the testator has made it clear, in my opinion, that it is individuals and not institutions or organizations that he had in mind. Accordingly, as a gift to or for the benefit of an individual must benefit that individual directly, I think that in prescribing in the second limb of the paragraph that " the persons to benefit therefrom " are

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to be determined by the directors, he has removed any ambiguity there might otherwise have arisen upon the phrase " the persons to benefit directly " in the earlier language. The testator had in mind I think, in the employment of the earlier language that while a gift to or for the benefit of a member of the specified class would involve direct benefit to him, it might, in many cases, also involve indirect benefit to others, e.g., relatives of the beneficiary. In making their selections from that class, however, the directors will be concerned only with persons to be directly benefited.

(c) Kellock, J. concurred in by Taschereau, and Fauteux, JJ.— *continued.*

I therefore think that the testator has devoted the income for " charitable purposes " among the persons of the class which he has himself described, to the exclusion of all others. Accordingly, while the opening language of the paragraph " to pay the income thereof in perpetuity for charitable purposes only," taken alone, could not well be broader for the purpose of expressing a general charitable intention, the language which follows makes it clear, in my opinion, that the testator had no general charitable intention but an intention that the income should be used for charitable purposes for the benefit only of the persons he specifies and for no one else. If this be the true view, the court is not in a position to apply the gift in any other way upon the failure of the testator's gift.

I think the case at bar is within the principle of *In re Wilson* (1913) 1 Ch. 314, rather than within *In re Monk* (1927) 2 Ch. 205. In *Anti-Vivisection Society* v. *Inland Revenue Commissioners*, 1948 A.C. 31, Lord Simonds, in dealing with the doctrine of general charitable intention, said at p. 64 :

> " It would be very relevant, if the society, conceding that the campaign against vivisection was not a charitable purpose, argued that there was yet a general charitable intention and that its funds were applicable to some other charitable purpose. That is not the argument. If it were, I should not entertain it, though it might in an earlier age have succeeded."

I would use the same language in the present case and would dispose of the appeal as proposed by my brother Kerwin.

(d) Estey, J. (d) ESTEY, J. :

The late Herbert Coplin Cox provided in his will that the residue of his estate should be held by his trustees upon trust

> " To PAY the income thereof in perpetuity for charitable purposes only ; the persons to benefit directly in pursuance of such charitable purposes are to be only such as shall be or shall have been employees of The Canada Life Assurance Company and/or the dependents of such employees of said The Canada Life Assurance Company ; subject to the foregoing restrictions, the application of such income, including the amounts to be expended and the persons to benefit therefrom, shall be determined by the Board of Directors of the said The Canada Life Assurance Company, as they, the said Board of

Directors, in their absolute discretion shall from time to time decide. The Trust Fund is to be known as ' The Cox Foundation ' in memory of the family whose name has been so long associated with the said Company."

His widow, the late Louise Bogart Cox, included an identical provision in her will and both have been considered in this litigation. As a matter of convenience only the will of Herbert Coplin Cox will be referred to hereafter.

The Court of Appeal for Ontario reversed the judgment of Mr. Justice Wells and held that the foregoing provision did not constitute a valid charitable trust or, as stated by Mr. Justice Roach, writing the judgment of the Court :

". . . These trusts are not trusts for general public purposes ; they are trusts for private individuals, a fluctuating body of private individuals but still private individuals. Because they are not for public purposes they are not charitable and are therefore void as offending the rule against perpetuities."

Counsel for the Appellant contends that the judgment of Mr. Justice Wells should be restored, declaring that the foregoing provision of the will constitutes a valid charitable bequest for the relief of poverty and, with respect to public benefit, he submits :

" The rule is either that the element of public benefit must be present in every category of legal charity except in the case of trusts for relief of poverty ; or that a trust for the relief of poverty of a class of persons per se creates a public benefit."

It is convenient first to consider how far public benefit is essential in the creation of a valid charitable trust. Charitable purposes and objects have been classified by Lord Macnaghten in *Pemsel's* case, 1891, A.C. 531, under four headings. These are trusts for (a) the relief of poverty ; (b) the advancement of education ; (c) the advancement of religion and (d) other purposes beneficial to the community not falling under any of the preceding heads.

In *Oppenheim* v. *Tobacco Securities Trust Co., Ltd.*, 1951 A.C. 297, securities were left upon trust to apply the income

" in providing for or assisting in providing for the education of children of employees or former employees of British-American Tobacco Co., Ld. . . . or any of its subsidiary or allied companies in such manner and according to such schemes or rules or regulations as the acting trustees shall in their absolute discretion from time to time think fit."

In the House of Lords it was held that this trust for educational purposes was invalid because the beneficiaries were limited to the children of employees of specified companies and, therefore, did not constitute a section of the community. Lord Simonds, at p. 306, stated :

" A group of persons may be numerous but, if the nexus between them is their personal relationship to a single propositus or to several

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propositi, they are neither the community nor a section of the community for charitable purposes.

" I come, then, to the present case where the class of beneficiaries is numerous but the difficulty arises in regard to their common and distinguishing quality. That quality is being children of employees of one or other of a group of companies. I can make no distinction between children of employees and the employees themselves. In both cases the common quality is found in employment by particular employers."

(*d*) Estey, J. —*continued.*

In the foregoing quotation Lord Simonds, with whom Lord Oaksey and Lord Morton of Henryton agree, makes it plain that it is not the number of beneficiaries that constitutes the test, but that however large the number, if the nexus between them in their personal relationship to a single propositus such as The Canada Life Assurance Company, they do not constitute a section of the community and, therefore, the trust is invalid, not being for a public benefit.

In *Gilmour* v. *Coats*, 1949, A.C. 426, the House of Lords emphasized the same requirement of public benefit in order that a valid charitable trust for religious purposes may exist. The Privy Council emphasized the same requirement in relation to a trust falling under classification (d) (for other purposes beneficial to the community) in *Verge* v. *Somerville*, *supra*, where Lord Wrenbury stated at p. 499 :

> " To ascertain whether a gift constitutes a valid charitable trust so as to escape being void on the ground of perpetuity, a first inquiry must be whether it is public—whether it is for the benefit of the community or an appreciably important class of the community. The inhabitants of a parish or town, or any particular class of such inhabitants, may, for instance, be the objects of such a gift, but private individuals, or a fluctuating body of private individuals, cannot."

The *Oppenheim*, *Gilmour* and *Verge* cases make it clear that public benefit must at least be found in charities classified under (b), (c) and (d) of Lord Macnaghten's classification ; further that the *Oppenheim* case makes it equally plain that in specifying the employees of The Canada Life Assurance Company and their dependents the testator had not created a trust for public benefit.

Counsel for the Appellant, however, contends that public benefit is not essential to the creation of a trust under Lord Macnaghten's classification (a) (for the relief of poverty).

Trusts for the relief of poor and needy relatives, usually described as the "poor relations cases", have at least since 1754 (*Isaac* v. *De Friez*, 2 Amb. 595) been held to be valid in courts of first instance and the Court of Appeal in England. These have been treated, in the Court of Appeal and in so far as they have been referred to in the House of Lords, as exceptions to the general rule that public benefit must be found in order that a charitable trust may be valid. (See Lord Simonds in the *Oppenheim* case, *supra*, at 308.)

There is also, in the Court of Appeal in England, a second exception to this general rule, of which *Gibson* v. *South American Stores Ld.*, 1950—1 Ch. 177, is an illustration. In that case the trust was for the benefit of those

> " who are or shall be necessitous and deserving and who, for the time being, are or have been in the company's employ . . . and the wives, widows, husbands, widowers, children, parents and other dependents of any person who, for the time being, is, or would if living have been, himself or herself a member of the class of beneficiaries."

The foregoing provision was held to be for the relief of poverty and the requirement of public benefit was raised by the Master of the Rolls at p. 191 :

> " Under the law as it has now been established, and in the light of its several recent decisions both in this court and in the House of Lords, is a trust for a class of poor persons defined by reference to the fact that they are employed by some person, firm or company, a good charitable trust, or does it fail of that qualification through the absence of the necessary public element ? "

The Master of the Rolls, after recognizing the " poor relations " cases as an exception or an anomaly, appeared to regard the decisions in *Spiller* v. *Maude* (1881) 32 C.D. 158. *In re Buck*, 1896—2 Ch. 727 and *In re Gosling*, (1900) 48 W.R. 301, as constituting another exception to the rule requiring that in a valid trust public benefit must be found. In each of these cases the fund was held to have been created expressly for the benefit of poverty and the fact that the beneficiaries must be selected from an association or company did not prevent its being a valid charity. The learned Master of the Rolls, in appreciation of the fact that the issue in the foregoing cases had never been before the House of Lords, recognized the possibility that it might be otherwise decided in that House. He, however, without in any way discussing the principles involved, felt bound by the unreported judgment of the Court of Appeal in 1935, *Re* Sir Robert Laidlaw, of whch no reasons were available. In his own words :

> " I think that, so far as I am concerned, this question has been determined by *In re Sir Robert Laidlaw*, on grounds which are not apparent, and I loyally follow them without affirming or disaffirming any of the grounds relied on by Harman J."

He, therefore, held the trust valid and the same position was taken by that court in *Re Coulthurst*, 1951—1 Ch. 661.

The case at bar, however, does not come within either of the foregoing exceptions. It could not, nor has it been suggested that it falls within the " poor relations " group. Then, with respect to the second exception or group, illustrated by the *Gibson* case, *supra*, it must be observed that all of the cases that have been included thereunder were specifically created for the relief of poverty and no other charitable purpose. This is not such a case. The language here, without enumerating them, includes all the

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classifications as made by Lord Macnaghten, which, of course, would include poverty. Even if this exception should ultimately become established in the law, it ought not to be so far extended as to include a trust for all charitable purposes such as that here under consideration.

The fact that the " poor relations " cases and the group illustrated by the *Gibson* case, *supra*, have been treated as exceptions to the general rule that a charitable trust must be not only charitable in character but for a public benefit indicates that the general rule requiring public benefit is applicable to trusts for the relief of poverty. Moreover, that such is the correct view is strengthened by the statements to be found in the authorities and text books, of which the following may be noted :

Lord Simonds :

> " . . . the principle has been consistently maintained, that a trust in order to be charitable must be of a public character. It must not be merely for the benefit of particular private individuals : if it is, it will not be in law a charity though the benefit taken by those individuals is of the very character stated in the preamble."

Williams' Trustees v. *Inland Revenue Commissioners*, 1947 A.C. 447 at 457.

Lord Porter in *National Anti-Vivisection Society v. Inland Revenue Commissioners*, 1948 A.C. 31 at 53, stated :

> " One must take it therefore that in whichever of the four classes the matter may fall, it cannot be a charity unless it is beneficial to the community or to some sufficiently defined portion of it."

See also Lord Wright at p. 42.

Then again the learned authors of Tudor on Charities, 5th Ed., p. 11, state :

> " In the first place it may be laid down as a universal rule that the law recognises no purpose as charitable unless it is of a public character. That is to say, a purpose must, in order to be charitable, be directed to the benefit of the community or a section of the community."

Whether public benefit exists in a given case is a question of fact. In *National Anti-Vivisection Society* v. *Inland Revenue Commissioners*, *supra*, the House of Lords adopted the view expressed by Russell J. (as he then was) in *Re Hummeltenberg*, 1923—1 Ch. 237. Lord Wright, at p. 44, adopts the language of Russell J. :

> " In my opinion, the question whether a gift is or may be operative for the public benefit is a question to be answered by the court by forming an opinion upon the evidence before it."

and expressly approves of it. At p. 42 Lord Wright states :

> " The test of benefit to the community goes through the whole of Lord Macnaghten's classification, though as regards the first three heads, it may be *prima facie* assumed unless the contrary appears."

Lord Simonds stated at p. 65 :

> " I will readily concede that, if the purpose is within one of the

heads of charity forming the first three classes in the classification which Lord Macnaghten borrowed from Sir Samuel Romilly's argument in *Morice* v. *Bishop of Durham*, 10 Ves. 521, the court will easily conclude that it is a charitable purpose. But even here to give the purpose the name of ' religious ' or ' education ' is not to conclude the matter. It may yet not be charitable, if the religious purpose is illegal or the educational purpose is contrary to public policy. Still there remains the overriding question: Is it *probono publico?* It would be another strange misreading of Lord Macnaghten's speech in *Pemsel's* case. 1891 A.C. 531 (one was pointed out in *In re Macduff*, 1896—2 Ch. 451), to suggest that he intended anything to the contrary. I would rather say that, when a purpose appears broadly to fall within one of the familiar categories of charity, the court will assume it to be for the benefit of the community and, therefore, charitable, unless the contrary is shown, and further that the court will not be astute in such a case to defeat on doubtful evidence the avowed benevolent intention of a donor."

If, therefore, upon the face of the document, the purpose or object of the trust is charitable in character, public benefit may be assumed or prima facie established, but where, as here, upon the face of the document it is clear that the cestuis que trust are limited to those who are employees of a particular company and their dependents, public benefit is negatived and, therefore, that element essential to a valid charitable trust is absent.

The Appellant further contends that the provision of the will above quoted should be construed to mean that the employees and their dependents were to benefit to the extent that the trust might be declared valid, or, as otherwise stated, the testator discloses an intention that the fund should be used for such charitable purpose or purposes as are legal within the named group. If, therefore, the absence of public benefit made invalid the trust under headings (b), (c) and (d) of Lord Macnaghten's classification, it would still remain a valid charitable trust for the relief of poverty. This contention, if maintained, would involve a consideration of the *Gibson* case, *supra*. However, in my view, the provision does not admit of such a construction. It would appear that the testator, in providing that the directors might expend the income for charitable purposes, included the relief of poverty, in the same sense that all other purposes and objects are included, and made it abundantly clear that the employees and their dependents should benefit, not only in case of financial need, but in any manner that might be included within the phrase " charitable purposes." Moreover, it cannot be concluded that the testator would not have been mindful of the fact that the directors would probably find it difficult to expend the fund for the relief of poverty only among the employees and their dependents.

There remains the further contention that, though the trust for the employees and their dependents may be invalid, the testator has, in the foregoing provision, disclosed a general charitable intention which should be

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administered cy-près. This involves a difficult question of construction. As stated by Lord Davey in *Hunter* v. *Attorney-General,* 1899, A.C. 309 at 321 :

> " You must construe the words of the will fairly, and if you can find a charitable purpose sufficiently clearly expressed the Court will give effect to it. If you do not find any such definite expression, you are not at liberty to supply it from more or less well-founded speculation of what the testator would probably have wished or intended if his attention had been drawn to the omission."

As Kay J. stated in *Re Taylor ; Martin* v. *Freeman* (1888) 58 T.L.R. 538 at 543 :

> " I take the line to be a very clear one ; perhaps sometimes it is difficult to say on which side of the line a particular case comes ; but the line, which we all very well understand, is one of this nature : if upon the whole scope and intent of the will you discern the paramount object of the testator was to benefit not a particular institution, but to effect a particular form of charity independently of any special institution or mode, then, although he may have indicated the mode in which he desires that to be carried out, you are to regard the primary paramount intention chiefly, and if the particular mode for any reason fails, the Court, if it sees a sufficient expression of a general intention of charity, will, to use the phrase familiar to us, execute that cy-près, that is, carry out the general paramount intention in some way as nearly as possible the same as that which the testator has particularly indicated without which his intention itself cannot be effectuated."

The testator, under his will, provided for relatives and friends by way of legacies and annuities and then set up the foregoing trust for the employees of the company over which he presided as president and their dependents. When read as a whole, the will rather supports the view that the testator intended to benefit only these groups.

It is, however, contended that in the paragraph creating this trust he discloses a general charitable intention. The opening words " To pay the income thereof in perpetuity for charitable purposes only," if they stood alone, would disclose a charitable intention. However, these words are but a part of the sentence creating the trust which must be read and construed as a whole. The phrase " subject to the foregoing restrictions " refers to both the limitation " for charitable purposes only " and the restriction of the benefit to the employees and their dependents. The testator appears here to place these two first portions of the provision upon an equal basis. Moreover, there is but one income and when, in that provision, he provides " the application of such income . . . shall be determined by the Board of Directors . . . in their absolute discretion " he uses the phrase " such income " to refer back to the word " income " as it is first used in this sentence. It would appear, therefore, that the testator contemplated the directors would expend the entire income upon charitable purposes, but for the benefit of the employees and their dependents.

The testator, throughout this paragraph, provides for the employees and their dependents in such a manner that they may benefit in any way that may be within the limits of charitable purposes. In a sentence so constructed it seems impossible to give to any part thereof a separate and distinct significance such as that here suggested.

The word " only " is twice used in this sentence and in both instances it adds nothing to the meaning except in so far as it may emphasize the intention of the testator. It is, however, stressed that the insertion of the word " directly " in the phrase " the persons to benefit directly in pursuance of such charitable purposes . . ." imports that the testator had in mind that the employees and their dependents would benefit directly but that some others or other groups might benefit indirectly, which could only be accomplished by interpreting the provision as disclosing a general charitable intention. Even if a general charitable intention be found, it does not follow that the beneficiaries would benefit indirectly. The word " directly " is not a word of art and, while in another context it might well support such a contention, as here used it merely emphasizes the testator's intention to directly benefit the employees and their dependents.

While the word " general " is not essential to disclose a general charitable intention, its absence in a provision by a testator given to using words of emphasis is significant where, as here, in the same sentence he sets forth his purpose, object and the names of the *cestuis que* trust. Further, the disposition if this residue, having regard to the variety of benefits and the number of beneficiaries, does not suggest any surplus and it cannot be assumed that the testator had any doubt as to the validity of the trust he was creating. The provision read as a whole does not disclose that the testator's paramount object was to benefit charity generally, but rather to benefit the employees and their dependents. In other words, in the language here used one cannot, to use the language of Lord Davey, " find a charitable purpose sufficiently clearly expressed."

The variation in para. 5 of the judgment of Wells J., relative to the will of Herbert Coplin Cox, as inserted in the Court of Appeal order, should be altered as set out by my brother Kerwin. The appeals should be dismissed. The costs of all parties should be paid out of the estate, those of the surviving administrator with the will annexed and trustee of the testator's will and codicil as between solicitor and client.

(*e*) CARTWRIGHT J.

These two appeals were argued together.

The late Herbert Coplin Cox died on September 17th, 1947, leaving a will dated June 25th, 1938. His widow, Louise Bogart Cox, died on November 18th, 1948, leaving a will dated November 2nd, 1948. The questions to be determined arise out of the residuary clauses contained in these wills. These are substantially identical in wording and it was common ground that the result should be the same in both appeals. It will therefore be necessary to consider only the residuary clause contained in the will of Mr. Cox. It reads as follows :—

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"SUBJECT as hereinbefore provided, and with respect to the balance of my residuary estate which may remain in my Trustees' possession, my said Trustees shall hold same upon trust as follows :

TO PAY the income thereof in perpetuity for charitable purposes only ; the persons to benefit directly in pursuance of such charitable purposes are to be only such as shall be or shall have been employees of The Canada Life Assurance Company and/or the dependents of such employees of said The Canada Life Assurance Company ; subject to the foregoing restrictions, the application of such income, including the amounts to be expended and the persons to benefit therefrom, shall be determined by the Board of Directors of the said The Canada Life Assurance Company, as they, the said Board of Directors, in their absolute discretion shall from time to time decide. The Trust Fund is to be known as ' The Cox Foundation ' in memory of the family whose name has been so long associated with the said Company."

The trustees moved on originating notice for the determination of a number of questions, but it was agreed when the motion came on for hearing before Wells J. that he should deal only with the question whether the disposition made in the residuary clause quoted above is a valid charitable bequest, and that upon the final determination of that question the matter should be referred back to the Weekly Court for further consideration.

Evidence was received of the following matters :—(i) that the number of persons in existence at the date of the hearing before Wells J. who would answer the description of employees, past or present, of the Canada Life Assurance Company and dependents of such employees was estimated to be somewhat in excess of thirty thousand, (ii) that a number of these were in such straitened circumstances as to need financial aid, (iii) that the known next-of-kin of Mr. Cox were of the fourth degree, and (iv) that the known next-of-kin of Mrs. Cox were of the fifth degree. It is stated in the reasons for judgment of the Court of Appeal that the residuary estate of Mr. Cox amounts to about $500,000.00 and that of Mrs. Cox to about $200,000.00.

Counsel appeared for the trustees of the wills, for the directors of the Canada Life Assurance Company, for the known next-of-kin, for the present Appellant who was appointed in each case to represent the employees of the Canada Life Assurance Company, for the Public Trustee who was appointed to represent such other persons as might benefit under the residuary clause in question and for the Official Guardian who was appointed to represent any unascertained persons who might be interested in the residue in the event of an intestacy.

Wells J. decided that the clause in question " is a valid charitable bequest for the relief of poverty." The Court of Appeal reversed this judgment of Wells J., declared that the clause does not constitute a valid charitable bequest and that it is therefore void as offending the rule against

perpetuities and ordered a reference to the Master at Toronto to determine and report as to who are the next-of-kin of Mr. Cox and Mrs. Cox respectively.

On appeal to this Court, counsel for the Appellant asked that the judgment of Wells J. should be restored and alternatively supported the argument of counsel for the Public Trustee. Counsel for the Board of Directors of The Canada Life Assurance Company adopted the argument of counsel for the Appellant. Counsel for the trustees of the wills submitted the rights of the trustees to the Court but " suggested " that the judgment of Wells J. should be restored. For the Public Trustee it was contended that the clause is a valid charitable bequest as it stands and is not restricted to the relief of poverty but that if this is not accepted there is a valid bequest for charitable purposes generally and if the particular mode prescribed for carrying such purposes into effect fails, in whole or in part, the general charitable intention should be executed cy-près. Counsel for the next-of-kin and for the Official Guardian supported the judgment of the Court of Appeal.

It will be convenient first to summarize the reasons which brought Wells J. and the Court of Appeal to their respective conclusions.

Early in his reasons Wells J. says :—

> " In the case at bar, however, the payment of income is limited ' for charitable purposes only ' and I think there can be no question that this gift must be deemed to be for any of the four purposes which the authorities have laid down as compendiously describing charitable trusts."

Later, after quoting from the judgment in *The Commissioners for Special Purposes of the Income Tax* v. *Pemsel* (1891) A.C. 531 at page 583 where Lord Macnaghten speaks of the four principal divisions which " Charity " in its legal sense comprises, the learned judge continues :—

> " As I have said, I must assume that all these four heads were intended to be included by these two testators in the phrase used by them to denote the purpose for which the residue of their assets was to be left, that is ' for charitable purposes only.' "

He then proceeds to the inquiry whether the trust is public—whether it is for the benefit of the community or of an appreciably important class of the community. After an examination of numerous authorities, including *Gilmour* v. *Coats* (1949) A.C. 426, *In re Gosling* (1900) 48 W.R. 300, *In re Drummond* (1914) 2 Ch. 90, *In re Rayner* 122 L.T.R. 577, *In re Compton* (1945) Ch. 123, *In re Hobourn Aero Components Limited's Air Raid Distress Fund* (1946) Ch. 194 and *Gibson* v. *South American Stores* (1950) 1 Ch. 177, the learned judge concludes that it has been decided by the Court of Appeal in England that a trust for the relief of poverty amongst the employees and ex-employees of a company and their families is a valid charitable trust. He proceeds :—

> ". . . The charitable objects which are roughly gathered together under the words ' relief of poverty ' and which include the various

items originally set out in the statute of Elizabeth and those of a similar nature are included in my view in the general words used by the testators when they provided that the income from the residue of their estates was to be paid over for charitable purposes only. Despite the very cogent argument addressed to me on behalf of some of the next-of-kin I must find that these testators had a general charitable intent which they have expressed without any ambiguity and that included in this intent was the division of charitable trusts which has been described as trusts for the relief of poverty. Under the exception which I have noted in the decisions the fact that the group intended to be benefited is defined by and depends upon a personal relationship either at first or second hand to the Corporation in which both the testators have been interested in their lifetime, does not preclude me from holding as I think I should under the authorities that in each of the wills before me there is a valid charitable bequest for the relief of poverty. But I must hold that the bequest is limited to this head of charitable relief. I do so realizing that the result is not a satisfactory one in the particular circumstances of this case but I am bound by the decision of the Court of Appeal of England in a matter of this sort unless there are contrary decisions of our own Court of Appeal and none have been cited to me nor have I found any."

The unanimous decision of the Court of Appeal was delivered by Roach J.A., who, after reviewing the authorities dealt with by Wells J. and the decision of the House of Lords in *Oppenheim* v. *Tobacco Securities Trust Co., Ltd.* (1951) A.C. 297, decided after Wells J. had given judgment, says in part :—

> " The trusts with which we are here concerned are ' for charitable purposes only.' That phrase necessarily includes all legal charities. The law is now definitely settled by as high authority as the House of Lords—the *Oppenheim* case—that to the extent that those purposes include the charities coming within the second, third and fourth divisions of charities as classified by Lord Macnaghten these trusts are not valid charitable trusts because the beneficiaries are limited to a group of individuals who are defined by reference to propositi named by the donor in each case. Wells J. reached that conclusion but he held that they were valid charitable trusts limited to the relief of poverty among the beneficiaries. In my opinion they are not legal charitable trusts even for that purpose.
>
> Clearly they do not come within the ' poor relations cases.' Those cases constitute a class of anomalous decisions which are now regarded as good law only because of their respectable antiquity.
>
> In the *Oppenheim* case Lord Morton of Henryton suggested that such a case as the *Gibson* case—the case at bar resembles it to the extent that the purposes of the trusts here in question include the relief of poverty—might be described as a descendant of the ' poor relations cases.' In this Province, at least, and I should think also in England

the ' poor relations cases ' as a class constitute a closed class and no other case not entirely identical with the poor relation cases should be legally adopted into that class.

Since that class is closed then the trusts here in question can be valid charitable trusts only if there is a second exception to the general rule, namely, trusts for the relief of poverty among a group of private individuals who are chosen by the donor by reason of another type of personal relationship, namely, their relationship as employees or dependents of employees of a named employer.

In my opinion this Court should hold that in this Province there is not such an exception to the general rule. The test as laid down in *In re Compton* and approved and applied in the *Oppenheim* case to an educational trust should also be the test to be applied in a trust for the relief of poverty. I can see no reason why it should be applied in the one but not in the other."

While the learned Justice of Appeal points out the distinction between the case at bar and *Gibson* v. *South American Stores* (*supra*), that in the former the relief of poverty is included in the purposes of the trust while in the latter poverty was a necessary element to qualify a person for benefit (*vide* *Gibson* v. *South American Stores* (*supra*) at 187), it would appear from the quotation from his reasons above, and particularly the last paragraph thereof, that even had the facts of the two cases been identical he would have refused to follow the Gibson case.

Roach J.A. does not in his reasons examine the argument of the Public Trustee as to the application of the cy-près doctrine. Early in his reasons, after stating the facts, he says :—

> " If the trust in question in each estate is not a valid charitable trust, it is void as offending the rule against perpetuities and a partial intestacy will result."

In my view, the first step to be taken in an endeavour to solve the problem presented to us is to construe the words of the clause in question, bearing in mind the rule that for the purpose of ascertaining the intention of the testator the will is read, in the first place, without reference to or regard to the consequences of any rule of law, the rules of law being applied to the intention thus collected in order to see whether the court is at liberty to carry the intention into effect (*vide* Halsbury 2nd Edition, Volume 34, page 189 and cases there cited). The clause first directs that the trustees shall hold the residue upon trust :—" To pay the income thereof in perpetuity for charitable purposes only." Pausing here, I cannot think of any words more apt to indicate a general charitable intention. The clause proceeds, not to prescribe in any detail the mode in which this charitable intention is to be carried into effect but to confer on the Board of Directors of the Canada Life Assurance Company, subject only to two restrictions, an absolute discretion as to the application of the income, " including the amounts to be expended and the persons to benefit therefrom." The absolute discretion so given is stated to be " subject to the foregoing

In the Supreme Court of Canada.

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(e) Cartwright, J.—*continued.*

restrictions." What then are these restrictions ? They are, first, that the income is to be paid " for charitable purposes only " and, second, that " the persons to benefit directly in pursuance of such charitable purposes are to be only such as shall be or shall have been employees of The Canada Life Assurance Company and/or the dependents of such employees." The usual and ordinary meaning of the words of the clause does not appear to me to differ from their literal meaning and I can find no ambiguity in the clause. It provides (i) that the income is to be used forever for charitable purposes only (ii) subject to this and to one further restriction an unfettered discretion is given to the Board of Directors of the Canada Life Assurance Company to direct the manner of its application (iii) the further restriction referred to is that the charitable purposes selected by the Board shall be such that direct benefits shall be conferred only upon members of a class made up of the present and past employees of The Canada Life Assurance Company and the dependents of such employees. I can find nothing in the words used to suggest that poverty is a necessary element to qualify any member of the class mentioned for benefit. While the clause forbids the conferring of direct benefits upon persons outside the class it does not require that direct benefits shall be conferred upon any of its members. The Board is left free, if it sees fit, to devote all the income to charitable purposes which confer only indirect benefits. The discretion given to the Board is no doubt a fiduciary discretion which must be exercised bona fide (*vide* the observations of the Master of the Rolls in *Gibson* v. *South American Stores* (*supra*) at page 185) but apart from this it is subject only to two restrictions above referred to.

The next, and, as it appears to me, more difficult question is whether the restriction referred to, i.e., " the persons to benefit directly in pursuance of such charitable purposes are to be only such as shall be or shall have been employees of The Canada Life Assurance Company and/or the dependents of such employees," is valid.

A considerable portion of the full and able arguments addressed to us on this branch of the matter proceeded as if the question were whether a perpetual trust to use the income of the fund for charitable purposes only and for the benefit only of members of the class mentioned would be a valid charitable trust. That is not the precise point before us, as, if my view as to the construction of the clause is correct, it is only in the case of direct benefits that the application of the income is confined to members of the class, but a consideration of it may be of assistance. I do not propose to attempt a review of the numerous authorities so fully discussed in the judgments below and in the recent decisions in England, above referred to. With respect, it appears to me that the present state of the law in England on this point is accurately summarised by Jenkins L.J. in *In re Scarisbrick* (1951) 1 Ch. 622 at page 648 et seq., as follows :—

> " . . . . (i) It is a general rule that a trust or gift in order to be charitable in the legal sense must be for the benefit of the public or some section of the public ; See *In re Compton, In re Hobourn Aero Components Ld.'s Air Raid Distress Fund,* and *Gilmour* v. *Coats.*

(ii) An aggregate of individuals ascertained by reference to some personal tie (e.g. of blood or contract), such as the relations of a particular individual, the members of a particular family, the employees of a particular firm, the members of a particular association, does not amount to the public or a section thereof for the purposes of the general rule : see *In re Drummond, In re Compton, In re Hobourn Aero Components Ld.'s Air Raid Distress Fund*, and *Oppenheim* v. *Tobacco Securities Trust Co. Ld.*

(iii) It follows that according to the general rule above stated a trust or gift under which the beneficiaries or potential beneficiaries are confined to some aggregate of individuals ascertained as above is not legally charitable even though its purposes are such that it would have been legally charitable if the range of potential beneficiaries had extended to the public at large or a section thereof (e.g., an educational trust confined as *In re Compton*, to the lawful descendants of three named persons, or as in *Oppenheim* v. *Tobacco Securities Trust Co. Ld.* to the children of employees or former employees of a particular company).

(iv) There is, however, an exception to the general rule, in that trusts or gifts for the relief of poverty have been held to be charitable even though they are limited in their application to some aggregate of individuals ascertained as above, and are therefore not trusts or gifts for the benefit of the public or a section thereof. This exception operates whether the personal tie is one of blood (as in the numerous so-called ' poor relations ' cases, to some of which I will presently refer) or of contract (e.g., the relief of poverty amongst the members of a particular society, as in *Spiller* v. *Maude*, or amongst employees of a particular company or their dependents, as in *Gibson* v. *South American Stores (Gath and Chaves) Ld.*)

(v) This exception cannot be accounted for by reference to any principle, but is established by a series of authorities of long standing, and must at the present date be accepted as valid, at all events as far as this court is concerned (see *In re Compton*) though doubtless open to review in the House of Lords (as appears from the observations of Lords Simonds and Morton of Henryton in *Oppenhiem* v. *Tobacco Securities Trust Co. Ld.* (1951) A.C. 297."

If, in the case at bar, the clause in question required the income to be used for the relief of poverty among the class described it would fall within the fourth proposition stated by Jenkins L.J. and it would be necessary for us to decide whether we should accept this proposition, as Wells J. did, or reject it, as the Court of Appeal did ; but, as I have already indicated, I am unable to so construe the clause.

I should here mention one of Mr. Robinette's arguments in support of the view that the clause should be construed as limiting the application of the income to the relief of poverty. It is said that the clause imperatively requires the income to be devoted in perpetuity to charitable purposes, that this must mean charitable purposes in the legal sense, that

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(e) Cartwright, J. —*continued.*

the testator has not specified any particular charitable purposes but, insofar as direct benefits are concerned, has defined with precision the class for whose benefit the income is to be applied, and that it must therefore be taken that he intended the income to be used for such purposes only as the law recognizes as charitable in regard to the defined class. This argument is necessarily based on the assumption that we should accept and follow the decision in *Gibson* v. *South American Stores* (*supra*) and for the purpose of the argument I will assume, without deciding, that we should do so. The learned judge of first instance appears to have accepted this argument which provides a reconciliation of the passages first above quoted from his reasons, to the effect that all of the four principal divisions of charity were intended to be included by the testator in the purposes for which the income from the residue was to be applied, with the final conclusion, also quoted above, that the bequest is limited to the relief of poverty. Not without hesitation I have reached the conclusion that this argument should not prevail. In my opinion the exception to the general rule set out in the fourth proposition stated by Jenkins L.J. is restricted to trusts in which the quality of poverty is made an essential condition of eligibility for benefit and should not be extended to cases where the trust permits income to be applied to any of the four principal divisions of charity ; nor should such an extension be effected by construing words in a trust instrument which in their ordinary and natural meaning in no way restrict the application of the income to the relief of poverty as if they imposed such a restriction merely by reason of the fact that there is a clear direction that the income is to be used for charitable purposes only.

In my opinion the restriction is invalid because the class to which direct benefits are restricted (in the words of Jenkins L.J., quoted above) " does not amount to the public or a section thereof." The restriction is therefore ineffective to either require or permit the trustees to confine the direct benefits of the trust to the class defined, that is, such persons " as shall be or shall have been employees of The Canada Life Assurance Company and/or the dependents of such employees."

It is next necessary to consider the effect of holding the restriction ineffective. In his reasons already quoted the learned judge of first instance says :—" I must find that these testators had a general charitable intent which they have expressed without any ambiguity." I have already indicated that I share this view. As is pointed out by Sargant L.J. in *In re Monk, Giffen* v. *Wedd* (1927) 2 Ch. 197 at page 212, it is now well settled that the question whether there is a general charitable intent is one depending on the construction of the particular will or other instrument. In the same case at page 204 Lord Hanworth M.R. says :—

> " The authority of the judgment of Parker J. in *In re Wilson* is invoked, where he defines broadly two categories into which the cases decided may be divided. The first where ' it is possible, taking the will as a whole, to say that, notwithstanding the form of the gift, the paramount intention, according to the true construction of the will, is

to give the property in the first instance for a general charitable purpose rather than a particular charitable purpose, and to graft on to the general gift a direction as to the desires or intentions of the testator as to the manner in which the general gift is to be carried into effect.' In such cases, even though the precise directions cannot be carried out, the gift for the general charitable purposes will remain, and be perfectly good, and the doctrine of cy-près applied. The other category is, ' where, on the true construction of the will, no such paramount general intention can be inferred, and where the gift, being in the form a particular gift —a gift for a particular purpose—and it being impossible to carry out that particular purpose, the whole gift is held to fail.' Parker J. concludes with the statement of his opinion that the question whether a particular case falls within the one or the other of the above categories is simply a question of the construction of the particular instrument."

In the case of *In re Wilson*, referred to by Lord Hanworth, Parker J. says that in this class of cases " different minds may very well take different views." To my mind it seems plain that in the case at bar the testator has indicated the paramount intention of giving the whole income from the residue of his estate to charity. This is expressed in the opening words of the clause :—" To pay the income thereof in perpetuity for charitable purposes only." All that follows in the clause is, in my view, a direction as to the manner in which the testator intends " such charitable purposes " to be carried into effect. The question being one of the construction of this particular will, only limited assistance can be derived from an examination of what Sargant L. J. refers to as " the long bead-roll of cases on the subject " but I have not found a case in which a will contained an express direction that income should be used for charitable purposes only in which it was held that there was not a general charitable intention. If the matter were doubtful it would be necessary to remember, as is pointed out by Lord Hanworth in *In re Monk* at page 207, " that the Court leans in favour of a charitable purpose." I wish to make it clear that my view that the will indicates a general charitable intention is not dependent on the effect which I think must be given to the word " directly " in construing the clause in question. If, contrary to my view, the words of the clause following the words " to pay the income thereof perpetuity for charitable purposes only " should be construed as confining all benefits from the trust to members of the defined class it would still be my opinion that the will read as a whole indicates a paramount intention to devote all the residue to charity. The impression which I gather from reading the whole of Mr. Cox's will (and the same is true as to the will of Mrs. Cox) is that the testator has, with care and in considerable detail, provided for all those persons whom he regarded as having a claim upon his bounty, that he has then addressed himself to the question of how he shall dispose of the considerable residue remaining, that he has decided to devote it in perpetuity to charitable purposes, that he has said so in the clearest terms, and then has gone on to direct the method of its application. That method failing, the general intention to devote the residue to charity remains.

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No. 25. Reasons for Judgment. 22nd December 1952.

(e) Cartwright, J. —*continued.*

Once it has been decided that as a matter of construction that there is a general charitable intention it is clear that such intention will not be allowed to fail. The question arises, however, whether it should be left to the Trustees of the will to apply the income under the direction of the Board of Directors of The Canada Life Assurance Company in accordance with the clause with the invalid restriction deleted or whether the Court should direct the income to be applied cy-près. While I think that the intention of the testator to confer direct benefits on members of the class mentioned, to be selected by the Board, to the exclusion, so far as direct benefits are concerned, of all who are not members of the class cannot be given effect, there would remain numerous ways in which the trust could be fully executed by applying the income to charitable purposes, which, while highly beneficial to the public, produce indirect benefits only, such as, for example, reduction of the National Debt, the support of schools, or contribution to what are commonly termed " Community Chests " ; but, reading the will as a whole, I find no reason to suppose that the testator would have forbidden the conferring of direct benefits except in furtherance of his intention to afford them to members of the defined class, which last-mentioned intention cannot be given effect. I do not think it can safely be assumed that the testator would have provided as the manner of carrying out his general charitable intention what would remain of the clause after the deletion of the restriction held to be invalid ; and I am therefore of opinion that the proper course is to direct a scheme.

I would allow the appeals, declare that each will discloses a general charitable intention as to the residuary estate but that the mode of carrying such intention into effect provided by the testator and testatrix respectively cannot be carried out, and direct that the matter be referred back to the Weekly Court so that the proper proceedings may be taken for the propounding and settlement of a scheme for the application cy-près of such residuary estate.

In the particular circumstances of this case I would direct that the costs of all parties appearing on each appeal be paid out of the fund in question in each estate, those of the trustees as between solicitor and client, and that the orders as to costs made in the courts below should stand.

In the Privy Council.

No. 26. Order of Her Majesty in Council granting special leave to Appeal. 19th June 1953.

No. 26.

Order of Her Majesty in Council granting special leave to Appeal.

AT THE COURT AT WINDSOR CASTLE.

The 19th day of June, 1953.

Present

THE QUEEN'S MOST EXCELLENT MAJESTY.

LORD PRESIDENT.	SIR NORMAN BROOK.
MR. MACMILLAN.	MR. JOHN EDWARDS.
MR. SELWYN LLOYD.	MR. HOLT.
SIR EDWARD BRIDGES.	SIR PATRICK SPENS.

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 20th day of May 1953 in the words following, viz. :—

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Edwin G. Baker in the matter of an Appeal from the Supreme Court of Canada in the matter of the estate of Herbert Coplin Cox deceased and in the matter of the Trustee Act R.S.O. Ch. 165 S. 59 and in the matter of the Judicature Act R.S.O. Ch. 100 S. 106 and Rule 600 of the Rules of Practice and Procedure passed pursuant thereto between the Petitioner Appellant and (1) National Trust Company Limited (surviving Administrator with the Will annexed and Trustee of the last Will and Testament and Codicil of Herbert Coplin Cox deceased and surviving Executor and Trustee of the Will of his widow Louise Bogart Cox) (2) The Board of Directors of the Canada Life Assurance Company (3) Margaret Jane Ardagh (4) William Burt Shepard (5) The Official Guardian for the Province of Ontario (6) The Public Trustee of the Province of Ontario Respondents setting forth (amongst other matters) : that the Petitioner desires special leave to appeal from a Judgment of the Supreme Court of Canada dated the 22nd December 1952 by a majority affirming subject to a variation thereof a Judgment of the Court of Appeal for the Province of Ontario dated the 16th February 1951 allowing unanimously an Appeal from a Judgment of the Supreme Court of Ontario dated the 27th January 1950 whereby Clause 16 of the Will of Herbert Coplin Cox was declared to constitute a valid charitable bequest for the relief of poverty : that the questions involved are of great general importance concerning the law relating to charitable bequests in the Province of Ontario upon which there is no authoritative judgment in the Canadian Courts but which have been considered but not wholly answered in the highest English authorities :

In the Privy Council.

No. 26. Order of Her Majesty in Council granting special leave to Appeal. 19th June 1953—*continued.*

And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal or for further and other relief:

"AND WHEREAS by virtue of the aforesaid Order in Council there was also referred unto this Committee a humble Petition of the aforesaid Edwin G. Baker in the matter of an Appeal from the Supreme Court of Canada in the matter of the estate of Louise Bogart Cox deceased and in the matter of the above mentioned Acts and Rules between the Petitioner Appellant and (1) National Trust Company Limited (surviving Executor and Trustee of the last Will and Testament of Louise Bogart Cox deceased) (2) The Board of Directors of the Canada Life Assurance Company (3) William Burt Shepard (4) The Official Guardian for the Province of Ontario (5) The Public Trustee of the Province of Ontario (6) Lida Louise Shepard Respondents setting forth (amongst other matters): that the Petitioner desires special leave to appeal from the aforesaid Judgment of the Supreme Court of Canada dated the 22nd December 1952 relating to Clause 3 (F) of the Will of Louise Bogart Cox: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal or for further and other relief:

"AND WHEREAS by virtue of the aforesaid Order in Council there was also referred unto this Committee a humble Petition of the Public Trustee of the Province of Ontario in the matter of an Appeal from the Supreme Court of Canada in the matter of the Estate of the aforesaid Herbert Coplin Cox deceased and in the matter of the above mentioned Acts and Rules between the Petitioner Appellant and (1) National Trust Company Limited (surviving Administrator with the Will annexed and trustee of the Will and Codicil of Herbert Coplin Cox deceased and surviving executor and trustee of the Will of Louise Bogart Cox deceased) (2) The Board of Directors of the Canada Life Assurance Company Limited (3) Edwin G. Baker (4) Margaret Jane Ardagh (5) William Burt Shepard (6) The Official Guardian of the Province of Ontario Respondents setting forth (amongst other matters): that the Petitioner desires special leave to appeal from the aforesaid Judgment of the Supreme Court of Canada dated the 22nd December 1952 relating to Clause 16 of the will of Herbert Coplin Cox: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal or for further and other relief:

"AND WHEREAS by virtue of the aforesaid Order in Council there was also referred unto this Committee a humble Petition of the aforesaid Public Trustee of the Province of Ontario in the matter of an Appeal from the Supreme Court of Canada in the matter of the estate of the aforesaid Louise Bogart Cox deceased and in the matter of the above mentioned Acts and Rules between the Petitioner Appellant and (1) National Trust Company Limited (surviving Executor and Trustee of the Will of Louise Bogart Cox deceased) (2) The Board of Directors of the Canada Life Assurance Company Limited (3) Edwin G. Baker (4) William Burt Shepard (5) The Official Guardian of the Province of Ontario (6) Lida Louise Shepard Respondents setting forth (amongst

No. 26.
Order of Her Majesty in Council granting special leave to Appeal. 19th June 1953—*continued.*

other matters): that the Petitioner desires special leave to appeal from the aforesaid Judgment of the Supreme Court of Canada dated the 22nd December 1952 relating to Clause 3 (F) of the Will of Louise Bogart Cox deceased: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal or for further and other relief:

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petitions into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion (1) that leave ought to be granted to the Petitioners to enter and prosecute their Appeals against the Judgment of the Supreme Court of Canada dated the 22nd day of December 1952 (2) that the Petitioner Edwin G. Baker ought to deposit in the Registry of the Privy Council the sum of £400 as security for costs (3) that the four Appeals ought to be consolidated and heard together upon two Printed Cases on the side of the Appellants and one Printed Case on the side of the Respondents Margaret Jane Ardagh, William Burt Shepard, The Official Guardian of the Province of Ontario and Lida Louise Shepard and one Printed Case on the side of the Respondents National Trust Company Limited (Administrator with the Will annexed of H. C. Cox), National Trust Company Limited (surviving executor of L. B. Cox) and the Board of Directors of the Canada Life Assurance Company Limited and (4) that the Appellants ought to undertake not to resist the costs of the Respondents Margaret Jane Ardagh, William Burt Shepard, The Official Guardian of the Province of Ontario and Lida Louise Shepard as between solicitor and client being paid out of the estate in any event provided that the Respondents Margaret Jane Ardagh, William Burt Shepard, The Official Guardian of the Province of Ontario and Lida Louise Shepard undertake on their part not to resist the costs of the Appellants as between party and party being paid out of the estate in any event:

"AND THEIR LORDSHIPS do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioners upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondents) as the Record proper to be laid before Your Majesty on the hearing of the Appeal."

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

WHEREOF the Governor-General or Officer administering the Government of the Dominion of Canada for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W. G. AGNEW.

Exhibits.

EXHIBITS.

HERBERT COPLIN COX, deceased.

Exhibit " A " to the Affidavit of John G. Hungerford. (Record, p. 5)

Exhibit " A " to the Affidavit of John G. Hungerford.

PROVINCE OF ONTARIO,
COUNTY OF YORK,
To Wit :

TO ALL TO WHOM THESE PRESENTS MAY COME, BE SEEN OR KNOWN :

I, WILLIAM CYRIL HENRY TERRY, a Notary Public for the Province of Ontario, by Royal Authority Duly Appointed, residing at the City of Toronto, County of York, in said PROVINCE DO CERTIFY AND ATTEST that the paper writing hereto annexed is a TRUE COPY of a document produced and shown to me from the custody of NATIONAL TRUST COMPANY LIMITED, and purporting to be Letters of Administration with the Will and Codicil Annexed of the Estate of HERBERT COPLIN COX, and granted by the Surrogate Court of the County of Halton, dated the 15th day of December, 1947.

THE SAID COPY having been compared by me with the said original document, an act whereof being requested, I HAVE GRANTED the same under my Notarial Form and Seal of Office to serve and avail as occasion shall or may require.

IN TESTIMONY WHEREOF I have hereto set my hand and affixed my Notarial Seal at Toronto, this 16th day of December, A.D. 1947.

" WILLIAM C. TERRY,"
A Notary Public.

CANADA : PROVINCE OF ONTARIO.

(Coat of Arms).

IN HIS MAJESTY'S SURROGATE COURT OF THE COUNTY OF HALTON.

BE IT KNOWN, that HERBERT COPLIN COX, late of the Town of Oakville, in the County of Halton and Province of Ontario, Executive, deceased, who died on or about the Seventeenth day of September A.D. 1947, at the Town of Oakville in the County of Halton and who at the time of his death had his fixed place of abode at the Town of Oakville, in the said County of Halton, made and duly executed LAST WILL AND TESTAMENT and Codicil thereto and did therein name LOUISE BOGART COX, of the Town of Oakville, in the County of Halton, Widow, the sole Executrix thereof, a true copy of which said Last Will and Testament and Codicil thereto is hereunto annexed;

AND BE IT FURTHER KNOWN that on the Fifteenth day of December, A.D. 1947, LETTERS OF ADMINISTRATION, with the said Will and Codicil

Exhibits.

Exhibit " A " to the Affidavit of John G. Hungerford (Record, p. 5.)—*continued*

annexed, of all and singular the property of the said deceased, were granted by the Surrogate Court of the COUNTY OF HALTON, To :

ALFRED HERBERT COX, of the City of Toronto, in the County of York, NATIONAL TRUST COMPANY, LIMITED, and Executive, nominees of the said Louise Bogart Cox, they the said National Trust Company, Limited and Alfred Herbert Cox having previously been sworn well and faithfully to administer the same, according to the tenor of the said Will and Codicil thereto by paying the just debts of the deceased, and the Legacies contained in his Will and Codicil so far as the same shall thereunto extend and the law bind them and by distributing the residue (if any) of the property according to law, AND to exhibit under oath a true and perfect Inventory of all and singular the property of the said deceased, AND to render a just and full account of their administration when thereunto lawfully required.

WITNESS HIS HONOUR WILLIAM NORMAN MUNRO, ESQUIRE, Judge of the said Surrogate Court at the Town of Milton, in the County of Halton, the day and year last above written.

BY THE COURT.
(Seal)

" WM. J. ROBERTSON,"
Registrar.

NOTICE :—The attention of all persons administering this estate is drawn to the regulations respecting trading with the enemy (1939), by which it is forbidden to distribute any portion of the assets of this estate to or on behalf of any beneficiary or creditor who is an enemy as defined by the regulations. If there is any such enemy interest now or subsequently in this estate it must be reported to THE CUSTODIAN, VICTORIA BLDG. 7 O'CONNOR ST., OTTAWA, CANADA, and no action with regard to such enemy interest can be taken without the consent of the Custodian.

" HCC "

THIS IS THE LAST WILL AND TESTAMENT of me, HERBERT COPLIN COX, of the Town of Oakville, in the County of Halton, and Province of Ontario Esquire, made this " 23rd " day of " June " in the year of our Lord one thousand nine hundred and thirty-eight.

" AWHK "
" EMS "

I HEREBY REVOKE all Wills and testamentary dispositions by me at any time heretofore made and declare this only to be my last will and testament.

I DIRECT my Executors to pay from and out of my Estate, as soon after my decease as may be convenient, all my just debts, funeral and testamentary expenses, as well as Succession Duty, if any, which may be

Exhibits.

Exhibit "A" to the Affidavit of John G. Hungerford (Record, p. 5)—*continued.*

assessable or chargeable against any gift, devise, bequest or legacy herein contained and/or against benefits, if any, which my wife, Louise Bogart Cox, may become entitled to under any Indenture or Indentures of Trust if any, which I may create in my lifetime, as it is my intention that all of the same shall be paid free of Succession Duty. With power to my Trustee or Trustees, as the case may be, to pay within the period permitted by the Ontario Succession Duty Act, the duty in connection with interests in expectancy or in remainder, instead of postponing the payment of such duty until the interests fall into possession.

I HEREBY DECLARE that the benefits herein provided for my said Wife shall be received and accepted by her in lieu of all dower, right and title to dower in and to my estate.

HAVING in mind that the National Trust Company, Limited, is already Trustee in respect of an important portion of my estate and having the fullest confidence in the judgment of my Wife, Louise Bogart Cox, and in her intimate knowledge of my affairs and my wishes, I HEREBY APPOINT my said Wife sole Executrix and Trustee of this my will. In the event of my said Wife predeceasing me, or in case my said Wife shall survive me but shall die before the complete administration of my estate, then I hereby APPOINT the NATIONAL TRUST COMPANY, LIMITED, and my Cousin, ALFRED H. COX, or the survivor of them, to be the Executors and Trustees of this my Will.

I HEREBY DECLARE that this my will is made in pursuance of all and every rights, powers and authorities in me vested, or me enabling, and particularly but without limiting the generality of the above, in pursuance of all powers of direction and appointment upon me conferred under and by virtue of any will, indenture, settlement or document of every nature and kind.

I GIVE, DEVISE, APPOINT AND BEQUEATH all of my estate, real and personal, of every nature and kind and wheresoever situated, including all estates and properties, real and personal of every nature and kind, if any, over which I have a power of direction and appointment from any and all sources, unto my Trustees above named, or to the survivor of them, to hold upon the following trusts of and concerning the same, namely:—

WITH RESPECT to all my household goods, chattels, furniture and effects of household or domestic use or ornament, as well as pictures, jewelry and contents of library, I direct my Trustees to permit my said Wife, in case she survives me, to have the possession and use of same for and during the term of her natural life or for such shorter time as my said wife may desire to so enjoy same, and upon the death of my said wife or upon her relinquishing to my Trustees all of the aforesaid and not desiring to further enjoy same as aforesaid, then same shall fall into my residuary estate and be converted by my Trustee with the same discretionary powers to said Trustees in the conversion of same as hereinafter conferred upon them in the conversion of my residuary estate; and during the enjoyment of same by my said Wife, no liability or responsibility in connection with

the safety or care of same is hereby cast upon my Trustees, other than keeping same insured at the expense of the balance of my residuary estate hereinafter referred to.

WITH RESPECT to all the rest, residue and remainder of my estate, but subject as hereinafter provided, to sell, call in and convert into money such portions of my estate as shall not consist of ready money, at such time or times, in such manner, for such price or prices and upon such terms and conditions as my Trustees in their absolute discretion shall deem to be in the best interest of my estate. With power, however, to my Trustees to postpone the conversion of my estate or of any portion thereof for such length of time as they in their discretion shall deem advisable without incurring liability by so doing. With further power to my Trustees to retain investments made by me in my lifetime as and for investments of my estate and of the trusts thereof, for such length of time or times as they in their discretion may deem advisable, without incurring liability by so doing, and pending the conversion of any portion of my estate, the income or dividends derived therefrom shall be treated as income of my estate and administered as income of my estate is hereinafter directed to be administered.

TO PAY from and out of my residuary estate to my said Wife, in case she survives me, the sum of two hundred and fifty thousand dollars ($250,000.00) without interest thereon; same may be paid to her, either in whole or in part, if she so desires, by way of assigning and transferring to her securities of my estate which I may die possessed of. Said securities which she may desire to have transferred to her shall be taken by her at their market value at the time of my death.

WITH RESPECT to all the balance of my residuary estate, to pay the net annual income derived therefrom to my said Wife for and during the term of her natural life, and from and after the death of my said Wife, to administer the said balance of my residuary estate, or from and after my death, in case my said Wife predeceases me, to administer all of my estate, subject as hereinbefore provided, in the following manner, namely:—

TO PAY the sum of three thousand dollars ($3,000.00) to the Trustees of Mount Pleasant Cemetery. Toronto, who are to use the income therefrom in the preservation and maintenance in a proper manner, in perpetuity, of the family Mausoleum in the said cemetery.

TO PAY the following respective legacies, without interest thereon, to the following respective beneficiaries, in case such beneficiary is living at the time of the death of my said Wife, or is living at the time of my death, in case my said Wife predeceases me, namely:—

(a) The sum of fifty thousand dollars ($50,000.00) to Alfred H. Cox; the sum of twenty-five thousand ($25,000.00) to Wilfrid M. Cox; the sum of ten thousand dollars ($10,000.00) to Frank W. Cox; the sum of ten thousand dollars ($10,000.00) to Harold Cox; the sum of ten thousand dollars ($10,000.00) to Ross Cox; the sum of five thousand dollars ($5,000.00) to Gordon Cox; the sum of five thousand dollars ($5,000.00) to Lilian Hall; the sum of five thousand dollars ($5,000.00) to Emma Barber; the sum of five thousand dollars ($5,000.00) to Minnie Pierce Edwards.

Exhibits.

Exhibit "A" to the Affidavit of John G. Hungerford (Record, p. 5.)—*continued.*

(b) The sum of twenty-five thousand dollars ($25,000.00) to my friend and Secretary, George F. Little.

(c) The sum of ten thousand dollars ($10,000.00) to Samuel Garner, my Secretary.

(d) The sum of two thousand dollars ($2,000.00) to Miss Nina Emrick, my accountant.

(e) The sum of one thousand dollars ($1,000.00) to each of the following friends of my wife, namely: Cameron Edwards, Marion Edwards, Florence Edwards, Ellen Fleming.

(f) The sum of five hundred dollars ($500.00) to Mrs. Annie Kimber; the sum of one thousand dollars ($1,000.00) to A. Liddington (known as Jim Liddington); the sum of five hundred dollars ($500.00) to Lindsay Trull; the sum of five hundred dollars ($500.00) to George Jones; the sum of five hundred dollars ($500.00) to John Donald; the sum of five hundred dollars ($500.00) to Arthur Porter, provided he or she shall be in my service at the time of my death and in the service of my said Wife at the time of her death in case she survives me.

(g) The sum of one hundred dollars ($100.00) to each servant of mine in Ennisclare, Oakville, Ontario, and in Twatley, Malmesbury, England, other than those named in the preceding paragraph (f) who shall have been in my service and in the service of my Wife, in case my Wife survives me, for five years or more, provided that she or he shall be in my service at the time of my death and in the service of my said Wife at the time of her death in case she survives me.

AFTER PROVIDING AS AFORESAID, TO SET ASIDE a sufficient part of the capital of the balance of my residuary estate which, when invested, will produce income sufficient to pay the following annuities, and to pay from and out of said income the following respective annuities to the following respective persons, during the term of their respective lives, provided such persons respectively survive me and survive my said Wife in case I predecease my said Wife, namely:—

To Louise Shepard, a Cousin of my Wife, the sum of one thousand dollars ($1,000.00) a year.

To Ida Bogar Forshay, a Cousin of my said Wife, the sum of six hundred dolllars ($600.00) a year.

To Ella Doyle Featherstone, a Friend of my said Wife, the sum of one thousand dollars ($1,000.00) a year.

To Mrs. Annie Kimber, the sum of one thousand dollars ($1,000.00) a year.

To Samuel Garner, the sum of two thousand dollars ($2,000.00) a year.

To Florence Durant Garner, the sum of six hundred dollars ($600.00) a year.

UPON the decease of any of the above annuitants, the Capital moneys so set aside to produce income sufficient to pay the aforesaid annuities and not from time to time required to provide income for the annuitants still

living, or such portion of said capital moneys as my Trustees shall decide upon, shall fall into and form part of the balance of my residuary estate and be administered by my Trustees as such balance of my residuary estate is hereinafter directed to be distributed.

AFTER providing as aforesaid, and in case my sisters Emma Jane Davis and Mary Ames shall survive me and my said wife, then the net annual income derived from my residuary estate then remaining in my Trustees' possession shall be paid to my said Sisters for and during the term of their natural lives, share and share alike, on the death of either the whole to the survivor.

SUBJECT as hereinbefore provided, and with respect to the balance of my residuary estate which may remain in my Trustees' possession, my said Trustees shall hold same upon trust as follows :

TO PAY the income thereof in perpetuity for charitable purposes only ; the persons to benefit directly in pursuance of such charitable purposes are to be *only* such as shall be or shall have been employees of The Canada Life Assurance Company and/or the dependents of such employees of said The Canada Life Assurance Company ; subject to the foregoing restrictions, the application of such income, including the amounts to be expended and *the persons to benefit therefrom*, shall be determined by the Board of Directors of the said The Canada Life Assurance Company, as they, the said Board of Directors, in their absolute discretion shall from time to time decide. The trust Fund is to be known as " The Cox Foundation " in memory of the family whose name has been so long associated with the said Company.

I DESIRE that whenever and so often as the services of a legal adviser, Solicitor or Counsel, shall be necessary in connection with the administration of my estate and the carrying out of the trusts thereof, that Mr. Frank McCarthy, K.C., and his firm shall be retained to act professionally in all such matters.

I HEREBY AUTHORISE my Trustees to invest moneys of my estate in any investments which they shall deem reasonably secured and likely to return a fair annual income, not being limited to investments expressly authorized by the laws of the Province of Ontario, and with power to retain investments made by me in my lifetime so long as they shall think proper and to reinvest the proceeds of same or any part thereof in similar securities, or in securities not limited to investments expressly authorized by the laws of the Province of Ontario, if they shall deem it advisable so to do, and in order to carry out my intention, I exonerate my Trustees from any responsibility for loss or damage which may be occasioned by retaining investments in the form which same shall be at the time of my death, or by reason of investments made by them in good faith in securities other than those authorized by law.

I FURTHER DECLARE that the discretions herein vested in my Trustees shall be absolute, unfettered, uncontrolled and unlimited by either time or circumstance.

Exhibits.

Exhibit "A" to the Affidavit of John G. Hungerford (Record, p. 5)—*continued.*

I HEREBY WILL AND DECLARE that, notwithstanding any of the devises and bequests hereinbefore made or contained, if any legatee, devisee, annuitant or beneficiary under my will enter litigation for the purpose of voiding, questioning, altering or setting aside this my will or any provision or term thereof, or refuses to confirm same or to do such acts and things as may be demanded for giving full effect to all or any of such dispositions, then and in every such case such legatee, devisee, annuitant or beneficiary shall thereupon forfeit all benefit hereunder, as any such step or conduct shall of itself make void any and every beneficial provision for such person or beneficiary herein contained, and as to the estate or benefit so forfeited I hereby declare that same shall form part of my residuary estate and be subject to the provisions and directions governing the disposition of said residuary estate, excepting always therefrom the said legatee, devisee, annuitant or beneficiary so offending as aforesaid if he or she would otherwise under the terms of this my will be entitled to share in or be benefited from such residuary estate, such persons so offending to be treated as having predeceased me and not entitled to share in any part of my estate under any of the provisions or devises herein contained.

IN WITNESS WHEREOF I have hereunto set my hand the day and year first above written.

SIGNED PUBLISHED AND DECLARED by the said Testator, Herbert Coplin Cox, as and for his last Will and Testament, in the presence of us both present at the same time, who at his request, in his presence and in the presence of each other have hereunto subscribed our names as witnesses.

"H. C. COX"

"A. W. H. KERR."
"EDWARD SHORTT."

THIS IS A CODICIL to the Last Will and Testament of me, Herbert Coplin Cox, of the Town of Oakville, in the County of Halton and Province of Ontario, which Will bears date the 23rd day of June, 1938.

"H.C.C."
"A.W.H.K."
"E.M.S."

I hereby direct my Trustees in the event of my Wife Louise Bogart Cox predeceasing me, and from and after my death, as soon as they may conveniently do so, to purchase from Combined Assets Limited at the fair market value and transfer and convey free of encumbrance to Samuel Garner of the said Town of Oakville, if he is still in my employ, the property which he occupied and which is more particularly described as follows:

Exhibits.

Exhibit " A " to the Affidavit of John G. Hungerford (Record, p. 5)—*continued.*

" ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Township of Trafalgar, in the County of Halton and Province of Ontario, being composed of a part of lot number 7 in Concession 111, south of Dundas Street in the said Township; and which said parcel of land is more particularly described as follows :

Premising that the course of that part of the Toronto-Hamilton Highway (formerly called Lake Shore Road) adjoining these lands is north Thirty-eight degrees, Seventeen minutes and Thirty seconds east (N. 38° 17′ 30″), and relating all bearings herein thereto ; and

COMMENCING at the most southerly angle of the said parcel of land, being at a point in the north-westerly limit of the said Toronto-Hamilton Highway, distant Ninety feet and Eleven and a half inches (90′ 11½″) south-westerly from the most easterly angle of the said lot ;

THENCE NORTH thirty-eight degrees, Seventeen minutes and Thirty seconds east (N. 38° 17′ 30″ E.) along the said limit of the Toronto-Hamilton Highway, Ninety feet and Eleven and a half inches (90′ 11½″) ;

THENCE on a course about north Forty-four degrees and fifty-two minutes west (N. 44° 52′ W.) along the limit between Lots Numbers 6 and 7 in the said Concession, as represented in August, 1931, by the line of a post and wire fence. Three hundred and Eighty-seven feet and Six inches (387′ 6″) to the line of a picket fence running south-westerly ;

THENCE SOUTH Forty-five degrees, Twenty-six minutes and thirty seconds west (S. 45° 26′ 30″ W.) along the line of the said picket fence, Ninety-seven feet and Eleven inches (97′ 11″) ;

THENCE SOUTH Forty-five degrees, Fifty-seven minutes and Thirty seconds east (S. 45° 57′ 30″ E.) along a line marked at the date hereinbefore last mentioned by stakes, Three hundred and Ninety-eight feet and Eleven inches (398′ 11″) more or less, to the point of commencement."

IN WITNESS WHEREOF I have set my hand this 23rd day of June, 1938.

" A.W.H.K."
" E.M.S."

SIGNED PUBLISHED AND DECLARED by the said Testator, Herbert Coplin Cox as and for a Codicil to his last will and testament in the presence of us both present at the same time, who at his request, in his presence and in the presence of each other have hereunto subscribed our names as witnesses :

" H. C. COX "

" A. W. H. KERR "
" EDWARD SHORTT "

Exhibit " B " to the Affidavit of John G. Hungerford

Chart of the known Next-of-Kin of the late

HERBERT COPLIN COX

living as of the 17th of September, 1947.

All persons of the IV degree take equally per capita.

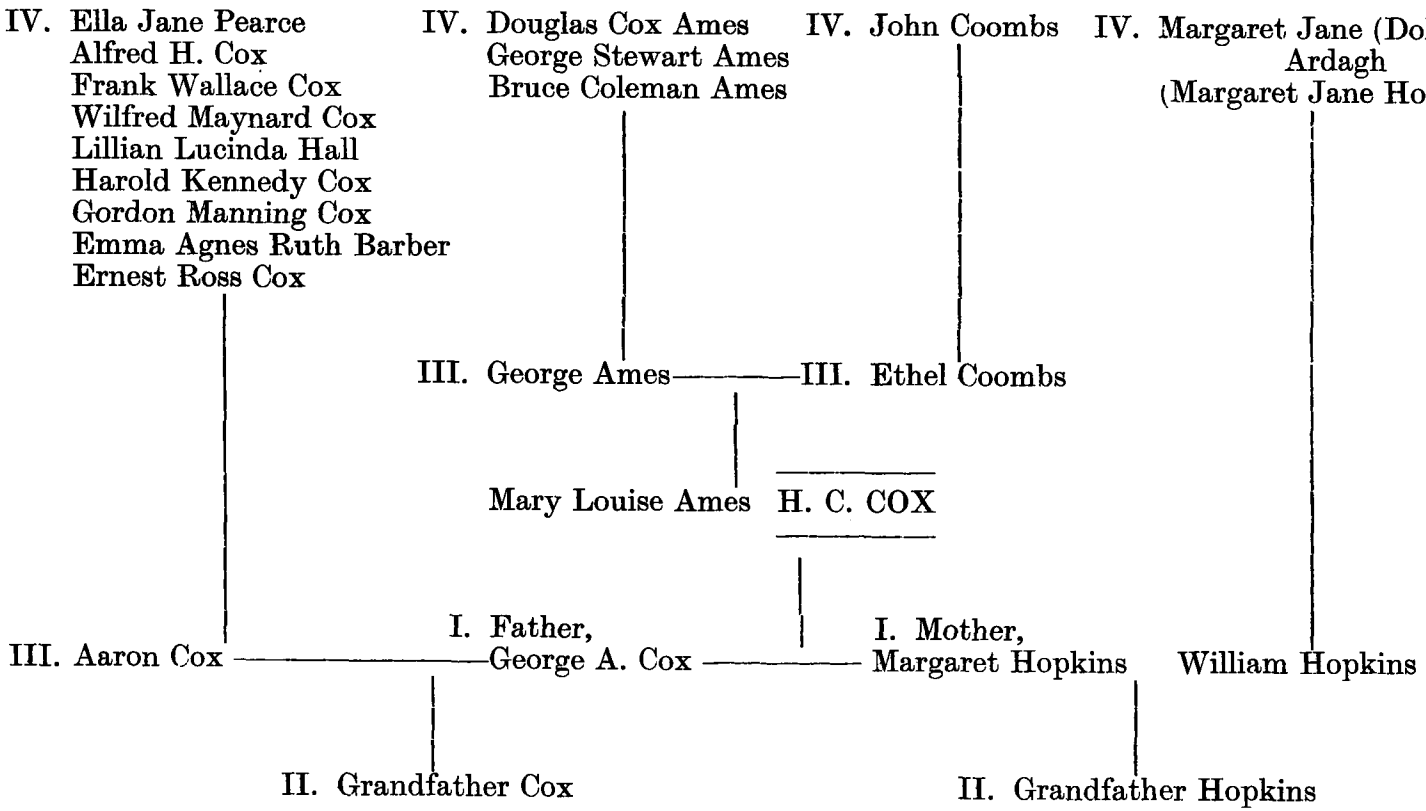

Exhibit " A " to the Affidavit of Clifford McCarthy.

Exhibit " A " to the Affidavit of Clifford McCarthy (Record, p. 12)

This is Exhibit " A " referred to in the affidavit of Clifford McCarthy, sworn before me this 10th day of May, 1949.

" J. F. H. McCARTHY,"
A Commissioner, etc.

EXHIBIT " A."

1. Male. Present age 27. Single. After one and a half years' service developed a brain tumor which affects his sight. Mother dependent on him for support.
2. Female. Present age 21. Mother critically injured by hit and run driver. Absent from employment several months caring for her.
3. Female. Aged 57. Sick mother to support and take care of. Absent from employment twelve months caring for her.
4. Female. Aged 42. Mother died of cancer after illness in bed of one and a half years with trained nurses. Parents not self-supporting. Money borrowed against pension to help pay for doctors, nurses and drugs.
5. Male. Age 48. Married—two children. Developed T.B. and confined to Gravenhurst Sanitarium for two years.
6. Female. Age 53. Single. Retirement forced on small pension on account of aged mother and two small nephews to care for.
7. Male. Age 51. Widower. 1 Son. Serious illness of wife lasting several months with major operation. Confined to hospital for entire period.
8. Male. Age 53. Married—three children. Serious illness of daughter for many years and eventually a major operation.
9. Female. Age 46. Serious illness with brain tumor threatened with blindness. Forced to retire on small pension at age 39.
10. Female. Would now be 38. Developed T.B. in 1933 and died in 1934. Was then the sole support of her widowed mother and three young sisters.
11. Male. Age 47. Heavy medical expenses in connection with wife's illness, operations and hospital bills exhausting all his resources.
12. Male. Age 48. Married—two children. One child with only one leg. Several artificial legs have to be purchased as the child grows. Low salary bracket and resources continuously depleted.
13. Female. Age 40. Widow—one child. Formerly employed by Company prior to marriage in 1937. Husband died of T.B. serving in the Canadian Army. Re-employed in 1943 and is the sole support of her mother and child.
14. Male. Age 64. Married. Wife has been an invalid for years requiring a nurse and housekeeper, with heavy medical expenses. Retired in 1948.

Exhibits.

Exhibit "A" to the Affidavit of Clifford McCarthy, (Record, p. 12)—*continued.*

15. Female. Age 56. Married. Low salary bracket. Married late in life. Husband in the sanitarium with T.B.

16. Married. Present age 27. 3 children. Daughter operated on for brain tumor. Hospital bills amount to $700.00 and surgeon's fees as high as $2,000.00. No resources other than earnings. Has applied to Children's Aid from State of Michigan.

17. Male. Age 68. A good producer up to 1931 but from then on began to slip and by 1937 was unable to work owing to mental and physical health. Has not qualified for pension.

18. Female. Aged 74. In bad health and no means of support. Has not qualified for pension and is now under Old Age Pension. She has no other income or resources.

19. Male. Age 64. Invalid wife for six years. Medical expenses dissipated all his resources. Continues to work hard but cannot make both ends meet.

20. Male. Age 64. Married. Practically incapacitated from arthritic condition resulting in heavy medical expenses. At best his pension on retirement will be $1,800.00 a year. His present physical condition and his resultant medical expenses place him in a very difficult financial position which condition will undoubtedly grow worse.

21. Male. Age 29. Married—one child. During past year wife has had several operations which exhausted his financial resources including war service gratuities. Wife apparently will be an invalid for her lifetime. Under serious financial stress.

22. Female. Age 77. Joined the Company at age of 52 and until 1940 was a good producer. At that time health began to fail. In receipt of old age pension.

23. Male. Age 76. Married—invalid daughter. While not actually qualified for pension in June, 1946, the Company agreed to allow him one on the same basis as if he had qualified. The pension amounts to $103.00 a month. Has wife and invalid daughter to keep.

24. Male. Age 76. Married. Went on pension November, 1942, because of heart condition. Wife and invalid daughter to keep, with the result under continual financial stress.

25. Male. Joined Company in October, 1922. Went on pension 1st November, 1948. Died in March of this year. The pension to his wife is $48.08 a month. Prior to his death was in hospital for several months and his last expenses will undoubtedly be very substantial.

26. Male. Age 74. Heart condition and unable to do much business. Is dependent on a sister. Has not qualified for pension. In consideration of his long service, since 1889, in 1947 was granted a pension of $75.00 a month for life.

27. Male. Age 67. Married. For approximately ten years has suffered from leg ailment which has been getting progressively worse. As a result his production has been such that he will not be eligible for a pension.

LOUIS BOGART COX, deceased.

Exhibit " A " to the Affidavit of John G. Hungerford.

Exhibit " A " to the Affidavit of John G. Hungerford (Record, p. 30)

PROVINCE OF ONTARIO
COUNTY OF YORK
To Wit :

Exhibit " A " to the affidavit of John G. Hungerford.

I, WILLIAM CYRIL HENRY TERRY, a Notary Public for the Province of Ontario, by Royal Authority duly appointed, residing at the City of Toronto, in the said Province, do certify that the paper writing hereto annexed is a true copy of a document produced and shown to me from the custody of National Trust Company Limited and purporting to be Letters Probate with the Will annexed of the Estate of Louis Bogart Cox, and dated the Twenty-second day of February, 1949, the said copy having been compared by me with the said original document :

AN ACT whereof being requested I have granted under my notarial form and seal of office to serve and avail as occasion shall or may require.

DATED at Toronto this 7th day of March, 1949.

" WILLIAM C. TERRY,"
A Notary Public in and for the Province of Ontario.

CANADA.
PROVINCE OF ONTARIO.

IN HIS MAJESTY'S SURROGATE COURT OF THE COUNTY OF HALTON.

BE IT KNOWN that on the Twenty-second day of February in the year of our Lord one thousand nine hundred and forty-nine

THE LAST WILL AND TESTAMENT

of LOUISE BOGART COX late of the Town of Oakville, in the County of Halton and Province of Ontario, Widow, who died on or about the Eighteenth day of November in the year of our Lord one thousand nine hundred and forty-eight at the City of Toronto in the County of York, and who at the time of her death had a fixed place of abode at Oakville, in the said County of Halton was proved and registered in the said Surrogate Court, a true copy of which said last Will and Testament is hereunto annexed and that administration of All and Singular the property of the said deceased, and in any way concerning her Will was granted by the aforesaid Court to

NATIONAL TRUST COMPANY, LIMITED, and
ALFRED HERBERT COX, of the City of Toronto, in the County of York, Executive, the sole

Executors named in the said Will having been first sworn well and faithfully to administer the same by paying the just debts of the deceased and the legacies contained in her Will so far as thereunto bound by law and by distributing the residue (if any) of the property according to law and to exhibit under oath a true and perfect inventory of All and Singular the said

Exhibits.

Exhibit " A " to the Affidavit of John G. Hungerford (Record, p. 30)—*continued.*

property, and to render a just and full account of their Executorship when thereunto lawfully required.

WITNESS His Honour, Archibald Cochrane, Esquire, Judge of the said Surrogate Court at the Town of Milton in the said County of Halton the day and year first above written.

By the Court,
" WM. J. ROBERTSON,"
Registrar.

(Seal).

NOTICE :—THE ATTENTION OF ALL PERSONS ADMINISTERING THIS ESTATE IS DRAWN TO THE REGULATIONS RESPECTING TRADING WITH THE ENEMY (1939), BY WHICH IT IS FORBIDDEN TO DISTRIBUTE ANY PORTION OF THE ASSETS OF THIS ESTATE TO OR ON BEHALF OF ANY BENEFICIARY OR CREDITOR WHO IS AN ENEMY AS DEFINED BY THE REGULATIONS. IF THERE IS ANY SUCH ENEMY INTEREST NOW OR SUBSEQUENTLY IN THIS ESTATE IT MUST BE REPORTED TO THE CUSTODIAN, VICTORIA BLDG., 7 O'CONNOR ST., OTTAWA, CANADA, AND NO ACTION WITH REGARD TO SUCH ENEMY INTEREST CAN BE TAKEN WITHOUT THE CONSENT OF THE CUSTODIAN.

THIS IS THE LAST WILL AND TESTAMENT of me, LOUISE BOGART COX, of the Town of Oakville, in the County of Halton, and Province of Ontario, Widow, made at the said Town of Oakville, this 2nd day of November, 1948.

1. I HEREBY REVOKE all former Wills and other testamentary dispositions of every nature and whatsoever kind heretofore made by me, and declare this only to be and contain my Last Will and Testament.

2. I NOMINATE, CONSTITUTE AND APPOINT NATIONAL TRUST COMPANY LIMITED and ALFRED HERBERT COX, of the City of Toronto, in the County of York, Executors and Trustees of this my Will and I hereinafter refer to them as " my Trustees."

3. I GIVE, DEVISE AND BEQUEATH all my estate, real and personal, of which I may die seized or possessed, or over which I may have power of disposition, appointment or control, not otherwise exercised before my death, to my Trustees, upon the following Trusts, namely :

(A) Subject to the life interests in Parts of the South-East quarter of Lot 7, Concession 3, S.D.S., Township of Trafalgar, as hereinafter provided, to sell, get in and realize my estate, or such part thereof as shall not consist of money, at such time or times, in such manner and upon such terms, and either for cash or credit, or partly for cash and partly on credit, as my Trustee may in the exercise of an absolute and uncontrolled discretion think fit, and with power and discretion to postpone such sale, getting in and realization for so long as my Trustees may in their absolute and uncontrolled discretion think fit, and further with power to invest and re-invest my estate in the manner hereinafter provided.

Exhibits.

Exhibit "A" to the Affidavit of John G. Hungerford (Record, p. 30)—*continued.*

(B) To pay my just debts, funeral and testimentary expenses, and also all Succession Duties and Inheritance and Death Taxes that may be payable by any beneficiary of this my Will or any Codicil hereto, in conncection with any gift or benefit given by me to any said beneficiary, either in my lifetime or by survivorship, or by this my Will or any Codicil hereto, and whether such Duties and Taxes are payable in respect of assets or interests which fall into possession at my death or at any subsequent time, and I hereby authorize my Trustees to commute the Duty or Tax on any interest in expectancy. Any Duties or Taxes so paid shall be treated as an ordinary debt of my estate.

(C) To pay the following legacies :—

1. To my Cousin, LOUISE SHEPARD, Five Thousand Dollars ($5,000.00).
2. To MARY MCPHERSON of the Town of Oakville, One Thousand Dollars ($1,000.00).
3. To LILLIAN WRIGHT (SISTER WRIGHT) of The Dorchester, London, England, Two Thousand Five Hundred Dollars ($2,500.00).
4. To WALLACE COX of Toronto, son of Frank Cox, Two Thousand Dollars ($2,000.00).

(D-i) To permit SAMUEL GARNER and/or his wife of the Town of Oakville, to occupy for and during the term of their respective lives, without impeachment for waste, the buildings and lands situate at the South-East corner of Lot 7, Concession 3, S.D.S., having a frontage on the Toronto-Hamilton Highway of approximately One Hundred and Eighty Feet (180′ 0″) by a depth on the East Limit of Lot 7 of Three Hundred and Eighty-Seven Feet, Six Inches (387′ 6″) together with a right-of-way for ingress and egress over a driveway located on the property described in paragraph (D-v) hereof and on that adjoining immediately to the East thereof and lying between the said property herein described. Upon the death of the said Samuel Garner and his said wife, the said buildings and lands to fall into and form part of my residuary estate.

(ii) To permit FREDERICK T. JENKS and/or his wife, ANNE J. JENKS, to occupy for and during the term of their respective lives, without impeachment for waste, the house and property known as Cottage No. 1 located at the South-West corner of my property known as the South-East quarter of Lot 7, Concession 3, S.D.S., together with the land adjoining same, having a measurement on the West and East of about One Hundred Feet (100′) and on the North and South of about Eighty Feet (80′). Upon the death of the said Frederick T. Jenks and Anne J. Jenks, the said house and lands to fall into and form part of my residuary estate.

(iii) To permit GEORGE T. ROBINS and/or his wife, DORIS A. ROBINS, to occupy for and during the term of their respective lives,

Exhibits.

Exhibit "A" to the Affidavit of John G. Hungerford (Record, p. 30)—*continued.*

without impeachment for waste, the house and property known as Cottage No. 2, together with the land adjoining same, having a measurement on the West and East of about Sixty Feet (60′) and on the North and South of about Eighty Feet (80′) which property adjoins immediately the North of the property described in D-ii above. Upon the death of the said George T. Robins and Doris A. Robins, the said house and lands to fall into and form part of my residuary estate.

(iv) To permit MRS. MARY MCPHERSON to occupy for and during the term of her lifetime, without impeachment for waste, the house and lands known as Cottage No. 3, together with the land adjoining same, having a measurement on the West and East of about Sixty Feet (60′) and on the North and South of about Eighty Feet (80′) which property adjoins immediately the North of the property described in (D-iii) above. Upon the death of the said Mrs. Mary McPherson, the said house and lands to fall into and form part of my residuary estate.

(v) To permit WILFRED M. COX and/or his wife, CAROL COX, to occupy for and during the term of their respective lives, without impeachment for waste, the house and lands situate on that part of the South-East quarter of Lot 7, Concession 3, S.D.S., Township of Trafalgar, fronting on the Toronto-Hamilton Highway and commencing at a point thereon Two Hundred and Twenty-Eight Feet (228′) West from the South-East angle of Lot 7 and running West One Hundred and Fifty-Seven Feet (157′) more or less by a depth of about Three Hundred and Eighty Feet (380′). Subject to a right-of-way over a driveway located on the herein described property.

Upon the death of the said Wilfred M. Cox and Carol Cox, the said house and lands to fall into and form part of my residuary estate.

The properties referred to herein as Cottages 1, 2 and 3 are to have a right-of-way leading from the Toronto-Hamilton Highway to the respective properties, such right-of-way to be located on the West limit of my lands known as the South-East quarter of said Lot 7.

I GIVE my Trustees full power and authority, in their absolute and uncontrolled discretion, to settle the boundary lines of the properties referred to in this Paragraph (D). All the properties intended herein to be dealt with are shown on the sketch of survey made by Messrs. Speight & Van Nostrand, dated September 4th, 1931, and amended on November 1st, 1937, and in numbering the Cottages described as aforesaid, the numbers shall run from South to North.

(E) To purchase and to use so much of my residuary estate for that purpose, from the Government of the Dominion of Canada and/or any Life Insurance Company doing business in the Dominion of Canada, Annuities as follows:

(i) On the life of MRS. MARY MCPHERSON, of Oakville, Ontario, said Annuity to be payable to her for and during the term of her natural life and to be paid to her monthly at the rate of Twelve Hundred Dollars ($1,200.00) per year.

Exhibits.

Exhibit "A" to the Affidavit of John G. Hungerford (Record, p. 30)—*continued.*

(ii) On the joint lives of FREDERICK T. JENKS and his wife, ANNE J. JENKS, of Oakville, Ontario, said Annuity to be payable to the said Frederick T. Jenks and Anne J. Jenks during their joint lives, and thereafter, to the survivor for and during the lifetime of the survivor, said payments to be made thereunder monthly at the rate of Twelve Hundred Dollars ($1,200.00) per year.

(iii) On the joint lives of GEORGE T. ROBINS and his wife DORIS A. ROBINS, of Oakville, Ontario, said Annuity to be payable to the said George T. Robins and Doris A. Robins during their joint lives, and thereafter to the survivor for and during the lifetime of the survivor, said payments to be made monthly thereunder at the rate of One Thousand Dollars ($1,000.00) per year.

(iv) On the joint lives of SAMUEL GARNER and his wife, FLORENCE GARNER, of Oakville, Ontario, the said Annuity to be payable to the said Samuel Garner and Florence Garner during their joint lives and thereafter to the survivor for and during the life time of the survivor, said payments to be made monthly thereunder at the rate of Five Hundred Dollars ($500.00) per year.

(v) On the life of MRS. CAROL COX, of Oakville, Ontario, wife of Wilfred M. Cox, said Annuity to be payable to her for and during the term of her natural life and to be paid to her monthly thereunder at the rate of Twelve Hundred Dollars ($1,200.00) per year.

(F) To hold all the rest, residue and remainder of my estate upon trust, as follows :

(a) To use so much of the income and/or capital thereof as may be necessary for the upkeep and maintenance of the properties described in Paragraph 3 (D) hereof.

(b) To pay the income thereof, subject to (a) hereof, in perpetuity for charitable purposes only ; the persons to benefit directly in pursuance of such charitable purposes are to be only such as shall be or shall have been employees of The Canada Life Assurance Company and/or the dependents of such employees of said The Canada Life Assurance Company ; subject to the foregoing restrictions, the application of such income, including the amounts to be expended and the persons to benefit therefrom, shall be determined by the Board of Directors of the said The Canada Life Assurance Company, as they, the said Board of Directors, in their absolute discretion shall from time to time decide. The Trust Fund is to be known as " The Cox Foundation " in memory of the family whose name has been so long associated with the said Company.

4. Whenever it becomes necessary for my Trustees to invest any moneys held in connection with my Estate, I will and declare that my Trustees in making such investment shall not be limited to investments authorized by law for Trustees but may invest in any investment that in

Exhibits.

Exhibit "A" to the Affidavit of John G. Hungerford (Record, p. 30)—*continued.*

their uncontrolled discretion they consider advisable, and my Trustees shall not be held responsible for any loss that may be occasioned by any such investment made by them in good faith.

5. I AUTHORISE my Trustees if they, in their absolute discretion, consider it in the best interests of my estate, to join in any plan for the reconstruction or reorganization or mutualization of any company or corporation in which I may own shares or stock at the time of my decease, or for the amalgamation or merger of any such company or corporation with any company or corporation, or for the sale of the assets of any such company or corporation, or any part thereof and they may, in pursuance of any such plan, accept any shares or securities in lieu of or in exchange for the shares or other assets held by my estate in such company or corporation. I further authorize my Trustees, if, in their absolute discretion, they consider it in the best interests of my estate so to do, to enter into any pooling or other agreement in connection with the interest of my estate in any company or corporation. In so empowering and authorizing my Trustees, it is my intention to give to my Trustees power and authority to deal with the shares or stock held by my estate in any company or corporation to the same extent and as fully as I could do if I were alive.

6. I REQUEST that whenever the services of a solicitor are required in connection with the administration of my Estate, Mr. Frank McCarthy, K.C., and/or the firm with which he is connected act in all such matters.

IN TESTIMONY WHEREOF I have hereunto set my hand the day and year first above written.

SIGNED, PUBLISHED AND DECLARED by the above named Testatrix, LOUISE BOGART COX, as and for her Last Will and Testament, in the presence of us, who, at her request, in her presence and in the presence of each other, have hereunto subscribed our names as witnesses. "LOUISE B. COX."

"FRANK McCARTHY."
"D. F. CAREY."

Exhibit " B " to the Affidavit of John G. Hungerford.

Exhibits.

Exhibit " B " to the Affidavit of John G. Hurgerford. (Record, p. 31).

Chart of the known Next-of-Kin of the late
LOUISE BOGART COX
living as of the 18th day of November, 1948.

All persons of the V degree take equally per capita.

V. ..... V. William Burt Shepard
Louise L. Shepard

IV. Lida Brown, married
Wm. R. Shepard

10 LOUISE BOGART COX

.... III. Henry Brown

I. Father
Theodore Bogart

I. Mother
Mary Ann Brown

II. Grandfather Bogart

II. Grandfather Gilbert Brown

In the Privy Council.

No. 20 of 1953.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

IN THE MATTER of the ESTATE of HERBERT COPLIN COX, deceased

AND

IN THE MATTER of the ESTATE of LOUISE BOGART COX, deceased

AND

IN THE MATTER of THE TRUSTEE ACT, R.S.O. Ch. 165, Sec. 59

AND

IN THE MATTER of the JUDICATURE ACT, R.S.O. Ch. 100, Sec. 106 and Rule 600 of the Rules of Practice and Procedure passed pursuant thereto.

BETWEEN

EDWIN G. BAKER (Respondent to Originating Motion) ... ... *Appellant*

AND

NATIONAL TRUST COMPANY, LIMITED AND OTHERS ... *Respondents*

— AND BETWEEN —

THE PUBLIC TRUSTEE FOR THE PROVINCE OF ONTARIO (Respondent to Originating Motion) *Appellant*

AND

NATIONAL TRUST COMPANY, LIMITED AND OTHERS ... *Respondents.*

(Consolidated Appeals.)

RECORD OF PROCEEDINGS

SLAUGHTER AND MAY,
18, Austin Friars,
London, E.C.2,
Solicitor for the Appellant Edwin G. Baker. and the Respondents National Trust Co., Ltd., The Board of Directors of the Canada Life Assurance Co. and Edwin G. Baker

CHARLES RUSSELL & CO.,
37, Norfolk Street,
London, W.C.2,
Solicitors for the Respondents Margaret Jane Ardagh, William Burt Shepard, The Official Guardian for the Province of Ontario and Lida Louise Shepard.

LAWRENCE JONES & CO.,
Winchester House,
Old Broad Street,
London, E.C.2,
Solicitors for the Public Trustee for the Province Ontario.

GEO. BARBER & SON LTD., Printers, Furnival Street, Holborn, E.C.4, and Cursitor Street, Chancery Lane.
(A62272)