Privy Council Appeal No. 20 *of* 1953

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 ... ... *Appellant*

AND

National Trust Company, Limited and Others ... ... *Respondents*

AND BETWEEN

The Public Trustee for the Province of Ontario... ... ... *Appellant*

AND

National Trust Company, Limited and Others ... ... *Respondents*

(*Consolidated Appeals*)

FROM

THE SUPREME COURT OF CANADA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 19TH MAY, 1955

Present at the Hearing:

THE LORD CHANCELLOR (VISCOUNT SIMONDS)
LORD OAKSEY
LORD REID
LORD TUCKER
LORD SOMERVELL OF HARROW

[*Delivered by* LORD SOMERVELL OF HARROW]

This is an appeal by special leave from a decision of the Supreme Court of Canada dismissing (by a majority) an appeal from the Court of Appeal of Ontario which allowed an appeal from Wells J. The question is whether there was by the will of the late Herbert Coplin Cox a valid charitable bequest of the residue of his estate which he directed his Trustees to hold 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 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."

An originating summons was taken out by the National Trust Company Ltd. and Mr. Cox as Administrators and Trustees of the Will. Edwin G. Baker is President of The Canada Life Assurance Company and represents the interests of the employees and ex employees. The other parties are the next of kin and the Public Trustee for Ontario who represents the interests of charities generally.

There is a similar provision in the will of Mr. Cox's widow.

It must first be determined what is the true construction of this bequest. In the event of a certain determination a question of much difficulty arises, whether a gift in perpetuity for the relief of poverty confined to employees of a particular employer and their dependants is a good charitable trust. In the view which their Lordships take that question does not fall for decision. To explain how the question arises and the issues raised on construction it is necessary first to recall Lord Macnaghten's definition of charity in *The Commissioners for Special Purposes of the Income Tax* v. *Pemsel* [1891] A.C. 531 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."

Secondly there should be borne in mind the familiar proposition that in order to qualify as a charity a gift must, to use the words of Lord Wrenbury in *Verge v. Somerville* [1924] A.C. 496 at p. 499 be " for the benefit of the community or of an appreciably important class of the community ". In connection with this general proposition it is to be remembered that a gift for the education of a group of employees of a particular employer is not a charity (*Oppenheim* v. *Tobacco Securities Trust Co. Ltd.* [1951] A.C. 297). There is ancient authority for supporting a gift for the relief of poor relations and the Court of Appeal has recently held good a gift to relieve the poverty of employees of a particular employer (*Gibson* v. *South American Stores (Gath & Chaves) Ld.* [1950] 1 Ch. 177). The correctness of this decision was expressly reserved in *Oppenheim's* case.

The first question of construction arises upon a submission made by counsel on behalf of the Public Trustee for the Province of Ontario. It was argued that there was a general charitable trust for " indirect " benefits which was not restricted to the class who were to receive " direct " benefits. On this view a *cy-près* scheme should be established. This construction was based mainly on the words " in perpetuity " and " directly " in the bequest. It commended itself to a minority in the Supreme Court but their Lordships cannot accept it. The words " in perpetuity " mark the distinction between charitable and ordinary trusts. The word " directly " is not inapt though it may be surplusage. The employees are to be his direct beneficiaries and it will be immaterial that others might benefit indirectly. It would need very plain words to restrict a trust to " indirect " benefits, nor is it clear what the words would mean. Their Lordships are satisfied that the only beneficiaries within the bequest are the employees and ex-employees of the Company and their dependants.

The second question turns upon the meaning in their context of the words " for charitable purposes only." It appears to their Lordships that these words look back to the preamble of the Statute of Elizabeth and the exposition of its scope and meaning which has been familiar to

generations of lawyers by the passage cited from Lord Macnaghten's judgment. The relevant bequest must then be read as if Lord Macnaghten's classification was set out in full after or instead of the words "for charitable purposes only." If it is so read it follows that the trustees are given a discretion to apply the income of the fund in perpetuity for the benefit of the employees in question for any of the purposes enumerated in Lord Macnaghten's classification and if this is so, it is not in doubt that the gift as a whole is not a good charitable gift. If it is open to doubt whether a gift in relief of poverty of such a group is valid it is clear that a gift for their education is not. This construction was put forward on behalf of the next of kin.

The alternative construction which is submitted on behalf of the employees, involves, as it appears to their Lordships, the introduction of words after the words "for charitable purposes only", which are designed not to explain those words but to avert the invalidity which ensues from reading them in their natural sense. The Court is in effect asked to read the phrase as if the testator had directed his trustees to apply the income not for all or any of the purposes which the law recognizes as charitable but only for such (if any) of those purposes as, having regard to the prescribed beneficiaries could be regarded as charitable.

While that is not perhaps an impossible construction the circumstances of this case are such that their Lordships cannot adopt it. The construction requires that the testator must be supposed to have had some doubt whether all the purposes or divisions set out by Lord Macnaghten could be held to be charitable purposes with regard to the class of persons whom he intended to benefit. The only reasonable doubt would have been whether, if the other purposes were invalid, the purpose of relieving poverty among these beneficiaries would be held valid. But the testator cannot have supposed that persons in the employment of the company would be in poverty save in the most exceptional circumstances nor can he have supposed that former servants of the company would often require financial assistance for this reason. Yet the sum which he directed to be held for charitable purposes is large and it appears to their Lordships to be impossible in the circumstances to hold that he intended it to be held solely for the purpose of relieving poverty among his beneficiaries if it should prove that no other purpose could be sustained as valid.

Although Wells J. found a good charitable trust for the relief of poverty it seems clear that he accepted the construction which commends itself to their Lordships. He said: "I think there can be no question that the gift must be deemed to be for any of the four purposes which the authorities have laid down, as compendiously describing charitable trusts," an opinion on the question of construction which he forcibly reiterated later in his judgment. In spite of this he felt able to declare a valid trust limited to the relief of poverty only. This with respect is wrong as has been stated above. On the construction adopted by Wells J. the whole trust must fail.

The Court of Appeal refused to follow or apply *Gibson's* case and the trust was therefore invalid on either construction. It is however clear that the Court took the same view as that taken by Wells J. Roach J.A. in whose judgment the other members of the Court concurred said: "The trusts with which we are concerned are 'for charitable purposes only'. That phrase necessarily includes all legal charities."

In the Supreme Court the minority as well as the majority construed the bequest in the same way. Kellock J. (with whom Taschereau and Fauteux JJ. concurred) said: "I see no escape from reading the words used as though the testator had set out *seriatim* the said four heads"—that is Lord Macnaghten's classification. Estey J. said: "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." Cartwright J. who was in the minority referred to the words in question as words "which in their ordinary and natural meaning in no way restrict the application of the income to the relief of poverty."

Finding this consensus of opinion upon the question of construction their Lordships would in any case be reluctant to take a different view, but it appears to them that the language of the will is unambiguous and that the construction placed upon them by the Courts in Canada gives plain words their proper meaning. Their Lordships will therefore humbly advise Her Majesty that the appeals be dismissed. The costs of all parties of these appeals will be paid as between solicitor and client out of the estates of Herbert Coplin Cox and Louise Bogart Cox and the former estate will bear three-quarters of such costs and the latter estate one-quarter of such costs.

(39170) Wt. 8082—47 150 6/55 D.L.

In the Privy Council

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, Appellant

and

NATIONAL TRUST COMPANY, LIMITED and Others, Respondents

and between

THE PUBLIC TRUSTEE FOR THE PROVINCE OF ONTARIO, Appellant

and

NATIONAL TRUST COMPANY, LIMITED and Others, Respondents

DELIVERED BY LORD SOMERVELL OF HARROW

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