FULL BENCH.

Before Broadway, Dalip Singh and Tapp JJ.

UMAR BAKHSH (ASSESSEE) Petitioner

versus

COMMISSIONER OF INCOME-TAX, PUNJAB—Respondent.

1931

June 5.

Civil Reference No. 12 of 1930.

Indian Income-Tax Act, XI of 1922, section 4 (3) (i)—Income derived from property held for religious or charitable purposes—Waqfnama—*charitable purposes postponed till death of founder and his issue—whether income exempt from income-tax—Civil Procedure Code, Act V of 1908, section 98—Appeal before two Judges—who differed in opinion and passed separate judgments—but agreed to a reference to a larger Bench—whether re-hearing of appeal by three Judges competent—Construction of taxing statutes.*

The deed in question purported to create a "perpetual trust" of the property in suit for the maintenance of the founder as long as he lived and for the maintenance of his children according to the Muhammadan Law and *Waqf* Validating Act—"to earn blessings in the next world"—and the deed concluded that according to its conditions the founder released the property from his possession as proprietor, he henceforth taking possession as a *Mutwalli* and manager during his lifetime and undertaking to spend the income according to his own wishes for his own maintenance and that of his children and also for religious or charitable purposes. Other clauses of the deed laid down that the income from the property shall be enjoyed by the descendants, male and female, of the donee till his line becomes extinct, in which case the property shall be managed by some Muhammadan Association for the benefit of orphans and widows. The Commissioner ruled that the income was not exempt from income-tax until in accordance with the *waqfnama* the whole or any part of that income was applied, or finally set apart for application, to religious or charitable uses as provided in the deed, and that the reservation of the income for the benefit of the donor and his

1931

JMAR BAKHSH
v.
COMMISSIONER OF INCOME-TAX.

successors could not be described even under the Mussalman Law as a religious or charitable purpose within the meaning of section 4 (3) (*i*) of the Income Tax Act. On the case going before a Division Bench of the High Court, the two Judges differed and wrote separate judgments, but agreed in view of the difference of opinion, to refer the matter to a larger Bench. The Chief Justice thereupon ordered that the case be heard by a Full Bench. The question referred was, whether the property held under this *waqf* was property held under trust wholly for religious or charitable purposes within the meaning of section 4 (3) (*i*) of the Income-tax Act, or whether it was property so held *in part only* for such purposes. It was objected that the reference was invalid, as under the terms of section 66 (3) of the Income-tax Act the provisions of section 98, Civil Procedure Code, shall apply to such a reference notwithstanding anything contained in the Letters Patent of any High Court, and as the Judges had differed and had expressed their opinions in judgments signed and dated by them, they were *functus officio* and as there was no majority, one way or the other, the opinion of the Income-tax Commissioner should prevail.

Held, (overruling the preliminary objection) that whether the learned Judges who differed intended their judgments to be final was a question of fact and in the circumstances the judgments could not have been so intended.

Karalicharan Sarma v. *Apurbakrishna Bajpeyi* (1), followed.

Held further (on the merits) that as the income accruing from the property under the deed at the present time could not be said to be in trust "wholly for religious or charitable purposes," it was assessable to income-tax while spent wholly, as admittedly it was at present, for the maintenance of the assessee and his children.

Abdul Fata Mahomed Ishak v. *Rasamaya Dhur Chowdhri* (2), *Balla Mal* v. *Ata Ullah Khan* (3), *Mohammad Ibrahim Riza Malak* v. *Commissioner of Income-tax, Nagpur* (4), and

(1) (1931) I. L. R. 58 Cal. 549.
(2) (1895) I. L. R. 22 Cal. 619 (P.C.).
(3) (1928) I. L. R. 9 Lah. 203 (P.C.).
(4) 1930 A. I. R. (P.C.) 226.

1931

UMAR BAKHSH v. COMMISSIONER OF INCOME-TAX.

Malak v. *Commissioner of Income-tax, Central Provinces* (1), referred to.

According to the cardinal principles of construction of a statute which (like a taxing statute) is meant to apply to all persons irrespective of their personal law, it is quite unnecessary to investigate the meaning of the words in the particular system of jurisprudence that may be followed by the assessee, and it is proper to construe the words in question with reference to the English Law on the point.

The Commissioner for special purposes of the Income-tax v. *Pemsel* (2), relied on.

Case referred by Mr W. R. Pearce, Commissioner of Income-tax, Punjab, with his No. R. 14 (i)-29/29-30, dated 31st March 1930, for the orders of the High Court.

Petitioner in person.

JAGAN NATH AGGARWAL, for Respondent.

JUDGMENT OF FULL BENCH.

DALIP SINGH J.—The following question has been referred to the High Court under the provisions of section 66 (3) of the Income-tax Act, namely :— DALIP SINGH J.

" Whether the property held under this *waqf* is property held under trust wholly for religious or charitable purposes within the meaning of section 4 (3) (*i*) of the Income-tax Act, or whether it is property so held in part only for such purposes."

The relevant terms of the *waqf* in question are as follows :—

" I create a perpetual trust of the property noted above for the maintenance of myself, as long as I am alive, and for the maintenance of my children according to the Muhammadan Law and the *Waqf* Validating Act of 1913, to earn blessings in the next world,

(1) (1928) 2 Reports of Income-Tax Cases 443. (2) 1891 A. C. 531, 548.

1931

JUMAR BAKHSH v. COMMISSIONER OF INCOME-TAX.

DALIP SINGH J.

and from the date of this deed, according to the conditions laid down in the deed, I release from my possession as a proprietor the property in question and take possession of the said property as a *Mutwalli*. The conditions of the trust shall be as under :—

(1) I will remain in possession of the said property as a *Mutwalli* and manager during my lifetime and will spend the income from the property according to my own wishes for my own maintenance and that of my children and also for religious or charitable purposes."

Other clauses of the deed lay down that the income from the property shall be enjoyed by the descendants, male and female, of the donee till his line becomes extinct, in which case the property shall be managed by some Muhammadan Association for the benefit of orphans and widows.

The assessee claimed that the income derived from the property after the execution of this deed on the 18th of October 1927 was not assessable to income-tax inasmuch as the property was held under trust wholly for religious or charitable purposes within the meaning of section 4 (3) (*i*) of the Income-tax Act. The Income-tax authorities refused to accept this contention and in the opinion of the Commissioner the income was not exempt until in accordance with the *waqfnama* the whole or any part of that income was applied or finally set apart for application to religious or charitable uses as provided in the *waqfnama*. The learned Commissioner was of opinion that the *waqf* might be valid owing to the *Mussalman Waqf* Validating Act of 1913, but according to him on a proper construction of that Act the reservation of the

1931

UMAR BAKHSH v. COMMISSIONER OF INCOME-TAX.

income for the benefit of the donee and his successors could not be described even under the Mussalman Law as a religious or charitable purpose. He relied on the case of *Malak* v. *Commissioner of Income-tax, Central Provinces* (1).

DALIP SINGH J.

The case went before a Division Bench of this Court and the learned Judges having differed in opinion the matter has been referred to a larger Bench for decision.

A preliminary point was raised by the learned counsel for the Income-tax Commissioner that the reference was invalid as under the terms of section 66 (3) of the Income-tax Act the provisions of section 98, Civil Procedure Code, shall apply to such a reference notwithstanding anything contained in the Letters Patent of any High Court. His argument was that, as the learned Judges had differed and had expressed their opinions in judgments signed and dated by them, they were *functus officio* and as there was no majority, one way or the other, the opinion of the Income-tax Commissioner should prevail. I do not think there is any force in this preliminary objection. In all such cases the question is one of intention and it is clear from the record that the learned Judges did not intend that their decision should be taken as final. Both agreed, in view of the difference of opinion, to refer the matter to a larger Bench through the learned Chief Justice. The order of the Chief Justice was : " let the case be heard by a Full Bench." But the mere existence of the words " Full Bench " as distinguished from the words used by the learned Judges " a bigger Bench " does not mean that the learned Chief Justice contemplated anything more

(1) (1928) 2 Reports of Income-Tax Cases 443.

1931

UMAR BAKHSH v. COMMISSIONER OF INCOME-TAX.

DALIP SINGH J.

than that a larger Bench should decide the case in view of the difference of opinion and the importance of the point involved. I find, if authority were needed on the point, in *Karalicharan Sarma* v. *Apurbakrishna Bajpeyi* (1), the learned Judges who differed there had written out full judgments and then agreed to refer the case to the decision of a third Judge. I would, therefore, overrule this preliminary objection.

To turn now to the merits of the question, in my opinion, there can be only one answer to the question referred to the High Court, but in view of the difference of opinion of the learned Judges, who originally heard the case, I propose to deal with the matter at some length.

The first question that arises is, what principle of construction should be adopted in construing the words "religious or charitable purposes" in the Income-tax Act. The contention of the assessee before us was that the words should be construed with reference to the personal law of the particular assessee in question. The contention of the learned counsel appearing for the Income-tax Commissioner was that the words should be construed either in their plain grammatical sense or in accordance with the principles of English Law. Now I find that in *The Commissioners for special purposes of the Income-tax* v. *John Frederick Pemsel* (2), the matter was considered with reference to the Income-tax Act in England where the question was whether a certain gift was for charitable purposes or not. At page 548 Lord Halsbury in his dissenting judgment observed as follows:—

"I also think the true view of the construction of an Act, which is to apply to England, Ireland and

(1) (1931) I. L. R. 58 Cal. 549. (2) 1891 A. C. 531, 548.

Scotland alike, is, that it ought to be construed according to the canon of construction laid down by the Court of Session in the case of *Baird's Trustees* v. *Lord Advocate* (1). It is a rule which has been acted on, not only in respect of Taxing Acts, but of other enactments. Indeed, it is only part of a general principle of common sense which Mr. Justice Grose laid down in a rating case: *R.* v. *Hogg* (2), "a universal law cannot receive different constructions in different towns." And if (to quote the language of Lord Justice Fry), words construed in their technical sense would produce inequality, and construed in their popular sense would produce equality, you are to choose the latter."

In spite of verbal criticisms that might be applied to the language, Lord Halsbury was of opinion that the above principle was a sound one. He also accepted the dictum of Lord Campbell: "In construing the statute on which the case depends we must bear in mind that it applies to the whole of the United Kingdom, and that the intention of the legislature must be understood to be that the like interests in property taken by succession should be subjected to the like duties, wheresoever the property may be situated. The technicalities of the laws of England and Scotland, where they differ, must be disregarded, and the language of the legislature must be taken in its popular sense." Applying this construction Lord Halsbury was of opinion that the gift in question did not come within the meaning of the words "charitable purposes." Lord Bramwell agreed. Lord Watson, while fully agreeing with the judgment of the majority, as given in the judgments of Lord

(1) 15 Sess. Cas. 4th Series 682. (2) 1 T. R. 728.

1931

UMAR BAKHSH v. COMMISSIONER OF INCOME-TAX.

DALIP SINGH J.

Macnaghten and Lord Herschell, was of opinion that the ordinary sense of the words "for charitable purposes" would include the gift in question. Lord Herschell was also of that opinion if the popular sense was to be adopted for the purposes of construction. He thought, however, that there was no distinction between the English and the Scotch legal construction. Lord Macnaghten was of opinion that while there was no vital difference between the English and Scotch Law on the point yet on the principle of construction he preferred the rule laid down by Lord Hardwicke that "you must take the meaning of legal expressions from the law of the country to which they properly belong, and in any case arising in the sister country you must apply the statute in an analogous or corresponding sense, so as to make the operation and effect of the statute the same in both countries." From these dicta I gather that according to the cardinal principles of construction of a statute which, like a taxing statute, is meant to apply to all persons irrespective of their personal law, the canon of construction must be either to take the plain grammatical meaning of the words used or to take the legal construction from the jurisprudence of the country in which the statute was drafted and apply it as far as possible so as to make the effect of the statute equal whether in a sister country or to sister communities following a different system of jurisprudence. In my opinion, therefore, for the purposes of construing the words "religious or charitable purposes" in the Income-tax Act it is quite unnecessary to investigate the meanings of the words in the particular system of jurisprudence that may be followed by the assessee. Such being the case, humbly agreeing with the opinion of Lord Macnaghten and of the majority of the Judges

in the Appeal Case cited, I would hold that it is proper to construe the term with reference to the English Law on the point, especially as the draft was made in the English language and by persons presumably acquainted with the English Law on the point.

Many other considerations fortify me in this view. Firstly, even if the principle of construction suggested by Lord Halsbury were adopted, the result, in my opinion, would be the same in the present case. Secondly, it is not in the least likely that the Legislature in using the words in question expected the Income-tax authorities to go into the complicated questions of law that may arise, if they had to find out in each particular case the meaning of the words with reference to the personal law of the assessee. Thirdly, it is not in the least likely that the Legislature intended to benefit any one community or any individuals of any one community at the expense of other members of different communities or of the same community. As pointed out by Lord Halsbury every remission of income-tax from one property or individual finally throws a heavier burden on other property and other individuals and the Legislature could hardly have contemplated such a contingency. In any case, I would not be prepared to hold so without much clearer words to that effect.

Applying then the above principle, I would hold that the property at the present time cannot be said to be in trust wholly for religious or charitable purposes and, therefore, it would follow that the income is assessable to income-tax while it is spent wholly, as admittedly it is at present, for the maintenance of the assessee and his children.

1931

JAMAR BAKHSH v. COMMISSIONER OF INCOME-TAX.

DALIP SINGH J.

Even, however, if it be admitted that the principles of Muhammadan Law must govern the question it seems to me that the matter is concluded so far as this Court is concerned by the judgment of their Lordships of the Privy Council in *Abdul Fata Mahomed Ishak* v. *Rasamaya Dhur Chowdhri* (1), where their Lordships held that a deed, such as the one in question, did not constitute a valid *waqf* for religious or charitable purposes. In 1913 the Mussalman *Waqf* Validating Act was passed. Their Lordships had occasion to consider the effect of this Act in a case subsequent, namely, *Balla Mal and others* v. *Ata Ullah Khan and others* (2), where admittedly the deed in question was valid under the Validating Act though it had been executed before that Act came into force. Their Lordships in that case held that the Act was not retrospective and that the *waqf* was invalid though they pointed out that in cases subsequent to the Validating Act the decision might be otherwise. It is clear, therefore, that their Lordships did not accept the contention that the Validating Act had declared the Mussalman Law to be other than what had been laid down by their Lordships in *Abdul Fata Mahomed Ishak* v. *Rasamaya Dhur Chowdhri* (1). In *Mohammad Ibrahim Riza Malak* v. *Commissioner of Income-tax, Nagpur* (3), a case under the Income-tax Act, their Lordships pointed out that the Validating Act introduced a third element into the case, namely, pious purpose as distinct from religious or charitable purposes. Their Lordships appear to have held that, while a gift for the maintenance of oneself and one's children with an ultimate reversion to the poor might be a gift for a pious purpose and the income devoted

(1) (1895) I.L.R. 22 Cal. 619 (P.C.). (2) (1928) I.L.R. 9 Lah. 203 (P.C.).
(3) 1930 A. I. R. (P.C.) 226.

1931

UMAR BAKHSH v. COMMISSIONER OF INCOME-TAX.

DALIP SINGH J.

to that purpose might be income devoted to a pious purpose, it would not necessarily be an income devoted to religious or charitable purposes. No doubt the words of the deed in that case were different but their Lordships did in observing on the arguments of the learned counsel before them imply that the income was not necessarily devoted to religious or charitable purposes, because the deed under which the income was so devoted was valid under the Mussalman *Waqf* Validating Act of 1913. The Validating Act from its terms clearly does not lay down that the judgment of the Privy Council in *Abdul Fata Mahomed Ishak* v. *Rasamaya Dhur Chowdhri* (1), was wrong, and it is possible to construe that Act merely as validating certain gifts with an ultimate reversion to religious or charitable purposes as being valid, which might otherwise not have been valid. It is also possible to construe it as drawing a distinction between a pious purpose and a religious or charitable purpose. Be that as it may, it is not open to this Court, in my opinion, in view of their Lordships' decisions above referred to, to hold that an income accruing from a property which has been dedicated to a *waqf*, which is solely employed for the maintenance of the assessee and his children is income devoted wholly to religious or charitable purposes within the meaning of section 4 (3) (*i*) of the Income-tax Act. On this ground too, I would, therefore, hold that the income is assessable.

I would, therefore, return the above answer to the reference. The assessee must pay the costs which I would assess at Rupees one hundred.

BROADWAY J.—I concur.

BROADWAY J.

TAPP J.—I concur.

TAPP J.

N. F. E.

(1) (1895) I. L. R. 22 Cal. 619 (P.C.).