## APPELLATE CIVIL.

*Before Sir Ernest H. Goodman Roberts, Kt., Chief Justice, and Mr. Justice Mosely.*

1939

*Jan. 10.*

# TAW CHEW KEAN AND OTHERS
*v.*
# TAW KOCK TYON AND OTHERS.*

*Trust for public purposes of a charitable or religious nature—Trust for religious and pious purposes, a charitable trust—Charitable trust presumed to be public trust—Private trust—Trust for benefit of members of family only—Public trust with preference to poor relations—Direction to trustees of public trust to use funds for benefit of poor members of settlor's family—No priority or exclusive selection—Civil Procedure Code, s. 92.*

Where a bequest is shown to be for religious purposes or for religious and pious purposes, it would be treated as a gift for charitable purposes unless the contrary be shown.

*White* v. *White*, (1893) 2 Ch. 41, referred to.

Where a gift is to purposes which are charitable, whatever else they may be in addition, then unless the charitable purposes expressed are clearly stated to be of a private nature the Courts will administer the trust as one for public purposes of a charitable nature. Where nothing is said as to the charitable purposes being private or public, they are presumed to be of a public nature.

*Legge* v. *Asgill*, 24 R.R. 51, referred to.

But where a trust by its very terms shows that its purposes are of a private nature, though they may be religious or charitable, *e.g.* a trust to benefit only the poor members of the settlor's family, it will not fall under s. 92 of the Civil Procedure Code.

*Attia* v. *Madha*, I.L.R. 14 Ran. 575, approved.

*Best* v. *Birmingham Corporation*, (1904) 2 Ch. 354 ; *Blair* v. *Duncan*, (1902) A.C. 37 ; *Houston* v. *Burns*, (1918) A.C. 337 ; *Ommanney* v. *Butcher*, 24 R.R. 42 ; *White* v. *White*, 7 Ves. J. 423, discussed.

If the object of a charity is general but there is a preference to poor relations, which is not confined to them, the bequest is valid as a public charitable trust.

*Waldo* v. *Caley*, 33 E.R. 962, referred to.

A deed of trust after providing for the maintenance and education of certain relatives of the transferor directed the trustees to use the balance for such charitable or religious and pious purposes as to the trustees seemed fit and proper at their absolute discretion " it being understood that charitable purposes shall include the providing of sustenance or support to such members of the family of the said transferor as may be in indigent or straitened circumstances."

* Civil first appeal No. 84 of 1938 from the judgment of this Court on the Original Side in Civil Regular No. 204 of 1937.

*Held* that the objects of the trust were for public purposes of a charitable or religious nature within s. 92 of the Civil Procedure Code. The direction as regards the indigent relatives meant only that their claims were not to be shut out of consideration. Under the trust the poor members of the transferor's family did not enjoy any priority, and there was no obligation on the trustees to select them ; they only came in as members of the general public.

*Hay* (with him *Tha Kin*) for the appellants.

*Krishnaswamy* for the respondents.

ROBERTS, C.J.—This is an appeal from a judgment of Sharpe J. dismissing a suit brought by the appellants under section 92 of the Code of Civil Procedure on the ground that it was not maintainable. The learned Judge held that the trust was not " created for public purposes of a charitable or religious nature " within the meaning of section 92.

The deed of Trust is dated May 7th, 1908, and, after various provisions for the maintenance and education of certain relatives of the transferor, recites

" and the balance in and upon such charitable or religious and pious purposes as the said transferor shall during his life time direct and after his death as to the Trustees shall for the time being seem fit and proper at their absolute discretion, it being understood that charitable purposes shall include the providing of sustenance or support to such members of the family of the said transferor as may be in indigent or straitened circumstances."

The learned Judge having examined the connotation of the word " pious " arrived at the conclusion that the trust fund in the present case must necessarily be used for purposes which were either charitable or religious, but he considered that these purposes were not necessarily public purposes, and that therefore the trust fund was not one which came within the scope of section 92. In particular he observed that the whole fund might be expended upon the needy members of the settlor's own family in which case, he said, it would certainly not be devoted to public purposes. Apart from that, the trustees might, he thought, devote

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the money at their disposal to charitable purposes which were not public, according to the terms of the trust ; or to religious and pious purposes of a private nature, such as the erection of a private place of worship to which none might be admitted save certain specified individuals.

Now it is quite true that if the trustees were given a discretion to utilize the trust funds for purposes which were charitable but not public, or religious but not public, section 92 would not be applicable, and the suit which was brought by the appellant would not be maintainable. This conclusion would be arrived at, in my view, from a consideration of the words of the section itself.

In *White* v. *White* (1) Lindley L.J. pointed out that *prima facie*, at any rate, a bequest for a " religious " purpose was a bequest for a " charitable " purpose and that the law applicable to charitable bequests as distinguished from the law applicable to ordinary bequests ought to be applied to a bequest to a religious institution or for a religious purpose. In other words, once a gift is shown to be for religious purposes it must be treated as a gift for charitable purposes unless the contrary be shown. If it is " for religious and pious purposes " the same is surely true, such a bequest being for purposes which are not only religious but also pious.

In a case in which a testator directed that " in case there is any money remaining, I should wish it to be given in private charity " it was held that there was no instance in which a private charity had been made the subject of disposal in the Crown or been acted upon by the Court ; for the charities recognized by the Courts were public in their nature and capable of execution by

(1) (1893) 2 Ch. 41.

the Court. [*Ommanney* v. *Butcher* (1).] Upon this ground are excluded all such bequests or settlements as are enjoined to be for purposes which are benevolent or philanthropic merely; or trusts which may be charitable but need not be so. Thus in *Blair* v. *Duncan* (2) the direction "Such charitable or public purposes as my trustees may think proper" was void for uncertainty. Lord Davey was careful to point out on page 44:

"If therefore the words in the present case were merely 'charitable purposes' or were 'charitable and public purposes' I think effect might be given to them."

Where the words used are "charitable *and* benevolent" purposes any object to be benefited must possess both characteristics. *Re Best Jarvis* v. *Birmingham Corporation* (3). Accordingly these words will constitute a good charitable trust, that is to say a charitable trust of a public character. But where the words used are "public, benevolent *or* charitable purposes" the gift is expressed in another form admitting non-charitable objects, for example objects of private benevolence only, or public non-charitable purposes, and the trust will fail [*Houston* v. *Burns* (4)].

But it is clear that where a gift is to purposes which are charitable, whatever else they may be in addition, then unless the charitable purposes expressed are clearly stated to be of a private nature the Courts will administer the trust as one for public purposes of a charitable nature.

In *Legge* v. *Asgill* (5) the testatrix in a codicil said "If there is any money left unemployed I desire it may be given in charity." It was held that the general residue of her estate, including a sum in which she had

(1) (1823) Turn. & R. 260; 24 R.R. 42.
(2) (1902) Ap. Ca. 37.
(3) (1904) 2 Ch. 354.
(4) (1918) A.C. 337.
(5) (1823) Turn. & R. 265; 24 R.R. 51.

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a vested reversionary interest at the time of her death, passed under these words to charity and was rightly claimed by the Attorney General in the absence of trustees.

Now, it was pointed out in *Attia* v. *Madha* (1) by Braund J. that a trust the income of which is to be applied in perpetuity for the benefit of poor relations or poor descendants of a testator or settlor is charitable in English Law; this is in conformity with the decisions in another case of *White* v. *White* (2) and other cases cited by the learned Judge. But he held, and if I may say so with respect, it seems to me rightly, that where a testator's intention is to benefit only the members of his own family who are poor this is not "a public purpose of a charitable nature" within the meaning of section 92 of the Code.

We have been referred to the case of *Waldo* v. *Caley* (3) which shows that where the object of a charity is general but there is a preference to poor relations, which is not confined to them, the bequest is valid as a charitable trust. That case follows the decisions which I have just mentioned, and is therefore by itself of little assistance in concluding the present appeal. But it does seem to show that the mere eligibility or preference of a certain class of beneficiaries will not, by itself, turn a trust of a public charitable nature into one of a merely private charitable kind.

A bequest to charitable purposes may by its very terms show that those purposes are of a private nature: in such a case though the bequest may be good in England it would not fall under section 92 of the Civil Procedure Code here. But where nothing is said as to the charitable purposes being private or public, they are presumed to be of a public nature. In other words,

(1) (1936) I.L.R. 14 Ran. 575, 587. (2) (1802) 7 Ves. J. 423.
(3) 16 Ves. J. 208; 33 E.R. 962.

if the direction be similar to that in *Legge* v. *Asgill* (1) the case here would fall under section 92.

It is therefore necessary to consider whether there is anything in the present case to make it possible for the trustees (in the words of the learned Judge) to devote the money at their disposal to charitable and pious purposes which are not public. I cannot see that there is. If the directions to the trustees had run "in and upon such charitable purposes as to the trustees shall for the time being seem fit and proper at their absolute discretion" I do not see how it could possibly be contended that the trust was otherwise than a charitable trust for a public purpose ; but it is urged that the directions comprised in the next words make it possible for the trustees to administer the trust fund as if it were a private charity merely.

Now, these directions do not say even that the trustees shall include in the disposal of the moneys the indigent members of the transferor's family ; what they say is "it being understood that charitable purposes shall include" provision for them. In my judgment that means they are eligible to receive some or all of the balance in the hands of the trustees, and not that they shall be necessarily selected to do so. They would be eligible in any event if they were in indigent or straitened circumstances, not as members of the transferor's family but as members of the general public. It is only a direction that (though they are not expressed to have even a priority) their claims are not to be shut out of consideration. It may be that the words were inserted *ex abundanti cautela* lest it should be thought that they were ineligible because related to the transferor.

Where charity, *prima facie* for public purposes, is the expressed object of the settlor, those public

(1) (1823) Turn. & R. 265 ; 24 R.R. 51.

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purposes seem to me in no way defeated by the reminder that members of his own family are eligible to benefit with other members of the public at large. If the trustees in their discretion were to dispose of the funds in their possession in such a way as continuously to defeat the public purposes of the trust, they might I think be restrained from so doing ; but they are not to be debarred at any time from considering the claims of all persons who may be indigent and in straitened circumstances whether they belong to the settlor's family or not : and in a particular distribution I do not say that members of the family might not prove to have the best claim to the exclusion of other members of the public of whom they form a part. All that is necessary in the present appeal is to decide whether the objects of the transferor were " public purposes of a charitable or religious nature." I should hold that they were. I agree that, from the wording used, specious argument might appear to justify a distribution amongst members of the transferor's family alone, from which the rest of the general public were excluded. But that, I think, is not the meaning of the direction. The provision of sustenance or support to such members of the family of the transferor as may be in indigent or straitened circumstances is merely understood to be included in the charitable purposes of a public nature for which the trust is formed. And, accordingly, I have reached the conclusion that this appeal ought to be allowed, The remaining issues should therefore now be framed, and the suit proceed to trial. The appellants are entitled to their costs on this preliminary issue here and in the Court below ; advocate's fees in this Court seven gold mohurs.

MOSELY, J.—I agree.