[HIGH COURT OF AUSTRALIA.]

JACKSON AND ANOTHER . . . . APPELLANTS;

AND

THE FEDERAL COMMISSIONER OF TAXATION . . . . . RESPONDENT.

H. C. OF A. 1920.

SYDNEY, *April* 15, 27.

Knox C.J., Isaacs, Rich and Starke JJ.

Estate Duty—Assessment—Exemption—Bequest for charitable purposes—Charitable institution not in Commonwealth—Estate Duty Assessment Act 1914-1916 (*No.* 22 *of* 1914—*No.* 29 *of* 1916), *sec.* 8 (5)—*Acts Interpretation Act* 1901 (*No.* 2 *of* 1901), *sec.* 21 (*b*).

Sec. 8 (5) of the *Estate Duty Assessment Act* 1914-1916 provides that "Estate duty shall not be assessed or payable upon so much of the estate as is devised or bequeathed or passes by gift *inter vivos* or settlement for religious, scientific, charitable or public educational purposes."

Held, by *Knox* C.J., *Isaacs* and *Starke* JJ. (*Rich* J. dissenting), that the exemption given by that sub-section in favour of devises, &c., for charitable purposes is not limited to such charitable purposes as have operation in Australia, but extends also to charitable purposes which are to be carried out abroad.

CASE STATED.

On the hearing of an appeal to the High Court by Ethel Florence Jackson and Norman Charles Clapperton, as executrix and executor of the will of George Robert Jackson, deceased, from an assessment of them by the Federal Commissioner of Taxation for estate duty in respect of the estate of their testator, *Knox* C.J. stated the following case for the opinion of the High Court:—

1. This matter is an appeal by the above-named appellants, who are the executrix and executor of the will of George Robert Jackson, late of Urangeline in the State of New South Wales, Esq., deceased (hereinafter called "the said testator"), against the

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assessment made by the respondent under the provisions of the *Estate Duty Assessment Act* 1914 of estate duty payable by the appellants in respect of the estate of the said testator.

2. The said testator on 26th July 1916 duly made his last will and testament, whereby he appointed the appellants executrix and executor thereof.

3. The said testator on 12th March 1918 died without having altered or revoked his said will, and on 9th August 1918 probate of his said will was granted by the Supreme Court of New South Wales in its probate jurisdiction to the appellants.

4. At the dates of his will and death the testator was domiciled in Australia, and was entitled to considerable real and personal property situated in Australia, and also to considerable personal property situated in England and elsewhere outside the Commonwealth of Australia.

5. By his said will the testator (*inter alia*) made the following charitable bequests: (*a*) to Dr. Barnardo's Homes National Incorporated Association, the registered office of which is 18 to 26 Stepney Causeway, London, England, the sum of £1,000 to be applied to the general purposes of the said Association; (*b*) to the trustees or other persons or body having the control of the funds of the Parish Alms Houses situate in George Street, Hadleigh, in the County of Suffolk, England, the sum of £1,000 upon trust to invest the same in such securities as trustees are authorized to invest in and to apply the annual income arising therefrom to the general purposes of the said Alms Houses.

6. The appellants allege, and the respondent for the purposes of this appeal admits, that each of the said institutions to which the said legacies are bequeathed is a charitable institution, and each is situate in England, and the scope of the activities of each of the said institutions does not extend to any part of Australia.

7. The respondent duly caused an assessment to be made in respect of the estate of the said testator.

8. The appellants contended that, according to the true construction of sec. 8 (5) of the *Estate Duty Assessment Act* 1914, estate duty should not be assessed or payable upon the two said sums of £1,000 so bequeathed, and accordingly claimed to deduct the sum of £2,000

in respect thereof from the value of the estate of the deceased for the purposes of such assessment.

9. The respondent disallowed the appellant's said claim and assessed the value of the said testator's estate for purposes of estate duty as £192,987, and in such assessment included so much of the testator's estate as was bequeathed to the said institutions, and on such assessable value assessed the duty payable by the appellants at £24,416.

10. The appellants duly and within the prescribed time lodged with the Commissioner an objection in writing against the assessment, stating as the ground of their objection "that the bequests in the said will contained to Dr. Barnardo's Homes and to Parish Alms Houses, Hadleigh, are bequests for charitable purposes, and are therefore covered by sec. 8 (5) of the *Estate Duty Assessment Act*, and that the disallowance of these bequests now sought to be made is erroneous."

11. The Commissioner duly gave the appellants written notice of his decision disallowing the said objection.

12. The appellants, being dissatisfied with the said decision, within the prescribed time duly lodged and served a notice of appeal from the said assessment, praying this Honourable Court to order that the assessment should be made on a dutiable value of £190,987.

13. On the hearing of this appeal before this Court the questions hereinafter mentioned arose in the appeal, and this Court, so thinking fit and with the concurrence of the appellants and the respondent, doth state this case in writing for the opinion of the Full Court of the High Court upon the following questions arising in the appeal, which in the opinion of this Court are questions of law, namely :

(1) Whether the exemption from estate duty of so much of an estate as is bequeathed for charitable purposes provided for by the *Estate Duty Assessment Act* 1914, sec. 8 (5), is limited to bequests for charitable purposes within the Commonwealth ;

(2) Whether the moneys bequeathed to the charitable institutions mentioned in par. 5 hereof are part of the estate of

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the said testator bequeathed for charitable purposes within the meaning of the said section.

Clive Teece, for the appellants. The exemption granted by sec. 8 (5) of the *Estate Duty Assessment Act* 1914-1916 in respect of bequests for charitable purposes is not affected by the residence, domicil or locality of the object of the testator's bounty. The tax is not in respect of the acquisition of ownership by the object of the bounty, but in respect of the passing of the ownership away from the testator (*National Trustees, Executors and Agency Co. of Australasia* v. *Federal Commissioner of Taxation* (1)). For the purposes of taxation under sec. 8 (3) the residence or domicil of the testator is immaterial, and so in the case of exemption it should be irrespective of the residence, domicil or locality of the beneficiary. That is borne out by sec. 8 (6), which imposes a lower rate of duty in the case of a bequest to the widow or children or grandchildren of the testator. It cannot be intended that the benefit of that sub-section is limited to children or grandchildren resident or domiciled in Australia.

[RICH J. referred to *Jefferys* v. *Boosey* (2).

[KNOX C.J. If gifts *inter vivos* to foreign charities are included in a testator's property for taxation purposes by sub-sec. 4, they would seem to be exempted from taxation by sub-sec. 5.]

R. K. Manning, for the respondent. Sec. 21 (*b*) of the *Acts Interpretation Act* 1901, which is perfectly general, imposes the duty on the Court of interpreting "charitable purposes" as meaning "charitable purposes in Australia." The exemption is for the benefit of the beneficiaries, and it should be construed as for the benefit of those beneficiaries only who owe obedience to the laws of the Commonwealth (*Jefferys* v. *Boosey* (3) ; *Macleod* v. *Attorney-General for New South Wales* (4) ; *Krzus* v. *Crow's Nest Pass Coal Co.* (5)).

[ISAACS J. referred to *Commissioners of Stamps (Qd.)* v. *Wienholt* (6) ; *Callender, Sykes & Co.* v. *Colonial Secretary of Lagos* (7) ; *New Zealand Loan and Mercantile Agency Co.* v. *Morrison* (8).

(1) 22 C.L.R., 367.
(2) 4 H.L.C., 815.
(3) 4 H.L.C., at pp. 926, 954.
(4) (1891) A.C., 455.
(5) (1912) A.C., 590, at p. 596.
(6) 20 C.L.R., 531.
(7) (1891) A.C., 460.
(8) (1898) A.C., 349.

[RICH J. referred to *Hughes* v. *Munro* (1).]

Sub-sec. 8, which defines "public educational purposes" as including the establishment of an educational institution "for the benefit of the public," must refer to the public of Australia.

Cur. adv. vult.

The following judgments were read :—

KNOX C.J., ISAACS AND STARKE JJ. (read by ISAACS J.). The question of law for our decision is whether sub-sec. 5 of sec. 8 of the *Estate Duty Assessment Act* is to be construed as limited to such "charitable . . . purposes" as have operation in Australia; or as extending to "charitable purposes" within the meaning of those words in this Act notwithstanding the purposes are to be carried out abroad. The Commissioner's main contention is that, notwithstanding the verbal generality of the expression, there is an implication or presumption that the operation of the purposes must be limited to Australia, on the principle stated in *Jefferys* v. *Boosey* (2) that "the Legislature . . . when legislating for the benefit of persons, must, *primâ facie*, be considered to mean the benefit of those who owe obedience to our laws, and whose interests the Legislature is under a correlative obligation to protect." See per Lord (then Lord Justice) *Moulton* in *Moulis* v. *Owen* (3). Doubtless, every enactment is primarily to be understood as limited to the jurisdiction of the Legislature which passes it, whether the limits be territory or subject matter. This matter was dealt with in *Wienholt's Case* (4). And primarily the words of a Commonwealth Statute are to be taken as extending only to the Commonwealth. (See, for instance, *Australian Gold Recovery Co.* v. *Lake View Consols* (5).) But, in every case, the construction of every Act depends upon its language as applied to the subject matter, after giving full weight to every legitimate aid to interpretation. It is not to be denied that in construing this Act there are some considerations which tell in favour of the Commissioner's contention. But on the whole we think, for the following reasons, that the appellants' view should prevail.

(1) 9 C.L.R., 289, at p. 294.
(2) 4 H.L.C., at p. 926.
(3) (1907) 1 K.B., 746, at p. 764.
(4) 20 C.L.R., at pp. 539-540.
(5) (1901) A.C., 142, at p. 148.

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The subject matter of the Act we are dealing with is estate duty in the true sense. It is not a succession duty. In *Attorney-General* v. *Peek* (1) the distinction was pointed out. *In arguendo* Lord *Wrenbury* (then *Buckley* L.J.) said (2): "There is a difference between estate duty and succession duty in this, that the former is a proportion of the dead man's *estate* which is taken by the State, while the latter is a sum of money which is claimed and taken away from the *person* who succeeds to the estate." In his judgment (3) the learned Lord Justice again referred to the distinction, and restated it in other words but to precisely the same effect. This is supported by what Lord *Shaw* said in *Winans* v. *Attorney-General* [*No.* 2] (4). That means that an estate duty looks to the *property* left by the deceased, and not to *persons* either in Australia or elsewhere, as the subjects of taxation. Necessarily, the person to whom by law the property is entrusted is made the vehicle for payment of the duty. The scheme of the Act is this :—On the death of any person anywhere in the world who leaves property described in the Act, a duty is imposed on the mass of that property, called "the estate of the deceased person." That estate is defined to include (broadly speaking): (1) all real and personal property actually situated in Australia, and (2) all personal property anywhere if the deceased was domiciled in Australia. The first is in right of territory, and the second in right of *jus gentium* exercised by Statute. So far for property which legally and ostensibly belonged to the deceased at his death. But further, since experience has shown that gifts *inter vivos* are frequently made in contemplation of death and intended to operate as testamentary dispositions, though not technically such, it has been for many years the recognized practice of Legislatures to protect the revenue by regarding, for duty purposes, all such gifts *inter vivos* as if they had not been made. It has further been a recognized test, in order to avoid difficulty, delay and litigation that would often be required to establish that such gifts were in fact made to operate as testamentary gifts, to provide a limit of time before death as determining the question. This has been followed by sub-sec. 4 of sec. 8, and

(1) (1913) 2 K.B., 487.
(2) (1913) 2 K.B., at p. 491.
(3) (1913) 2 K.B., at p. 495.
(4) (1910) A.C., 27, at p. 47.

in that case all property within the meaning of that sub-section, which passed from the deceased person by a gift *inter vivos* within a year before his decease, is deemed for the purposes of the Act to be part of the estate. It follows that not merely Australian property, but also foreign property, which a domiciled Australian had within a year before his death and which was not his at the time of his death, may be his " estate " for the purposes of the Act. Whether Australian or foreign, the gifts *inter vivos* may have been for a foreign charitable purpose, yet by sub-sec. 4 it becomes taxable as notionally part of his estate. If under sub-sec. 4 no distinction is made between foreign and Australian charitable purposes, we think it tells greatly in favour of the absence of any such distinction in sub-sec. 5. In view of the necessary effect of sub-sec. 4 in this respect, it appears to us that not only is it impossible to say that this provision is to be territorially restricted, but also that it is improbable that the Legislature, if it meant to create the distinction contended for, would have failed to say so expressly. And there is one other consideration, which seems to us to be of weight. The common law of England, notwithstanding its repugnance to inalienability of property, real or personal, always relaxed its prohibition in favour of " charitable purposes," in the large Elizabethan sense, whether in England or elsewhere. Such a purpose is a favoured purpose, not merely because executed in England, but for its own sake. This leads to the conclusion that the mass of property constituting the " estate " is first made *primâ facie* dutiable, and then such part of it as bears the character, not of private benefit but (*inter alia*) of " charitable " benefit, is exempted. The Legislature in effect declines to take from such a purpose—irrespective of the nationality of the recipients—any portion of the property. On the whole, we think the following words of Lord *Haldane* L.C. with reference to the English *Finance Act*, in *Attorney-General* v. *Milne* (1), apply :—" All we are permitted to look at is the language used. If it has a natural meaning we cannot depart from that meaning unless, reading the Statute as a whole, the context directs us to do so. Speculation as to a different construction having been contemplated by those who framed the Act is inadmissible, above all

(1) (1914) A.C., 765, at p. 771.

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in a Statute which imposes taxation." It is scarcely necessary to add that, as this conclusion is reached on the nature and language of the particular Statute, it leaves entirely untouched the effect of provisions somewhat analogous in other Statutes.

The Commissioner also relied on sec. 21 (*b*) of the *Acts Interpretation Act* 1901. We think that that section does not apply; and, if it did, having regard to the subject matter and the language of the Statute under consideration, the contrary intention appears so far as relates to the question we are dealing with.

For these reasons, we are of opinion that the first question should be answered in the negative, and the second in the affirmative.

RICH J. The question raised by this case is whether the exemption from estate duty of so much of an estate as is bequeathed for charitable purposes provided for by the *Estate Duty Assessment Act* 1914, sec. 8 (5), is limited to bequests for charitable purposes within the Commonwealth. The Act by sec. 8 (3), (4), sweeps into the net real and personal property physically situated in Australia, and also brings constructively within the Act personal property wherever situate. Property which, in reality, is the subject of " death-bed " gifts of semi-testamentary dispositions is also deemed to be part of the estate for the purpose of the Act. This aggregation of property is Australian, to be taxed for Australian purposes by an Australian Statute.

The controversy in this case is concerned with the ambit of sec. 8 (5), and the scope of its operation. That sub-section is as follows: " Estate duty shall not be assessed or payable upon so much of the estate as is devised or bequeathed or passes by gift *inter vivos* or settlement for religious, scientific, charitable or public educational purposes." In the construction of this sub-section I differ from my brethren, and venture respectfully to apply to its interpretation the language of *Cozens-Hardy* M.R. in *Tomalin* v. *S. Pearson & Son Ltd.* (1):—" It seems to me reasonably plain that this is a case to which the presumption which is referred to in *Maxwell* on the *Interpretation of Statutes* in the passage at p. 213 . . . must apply: ' In the absence of an intention clearly expressed or to be inferred from its language,

(1) (1909) 2 K.B., 61, at p. 64.

or from the object or subject matter or history of the enactment, the presumption is that Parliament does not design its Statutes to operate beyond the territorial limits of the United Kingdom.'" Society, no doubt, encourages benevolence and charity, but it is not the proper function of a State to reach outside its boundaries into foreign countries and apply its revenues to the support of religion, charity or education for the benefit of mankind at large. Ordinary State policy and statutory presumption are opposed to the implication of the grant of a privilege by the Legislature such as that now contended for. It is familiar knowledge that certain Statutes of individual States of the Commonwealth, speaking generally, exempt from rates churches, universities and colleges, hospitals, benevolent institutions and buildings used exclusively for charitable purposes, and that, with the exception of churches, these institutions and purposes are subsidized out of the public revenues of their respective States, and I think that sec. 8 (5) is framed so as to harmonize with the general local law and similarly to exempt local purposes.

The wider construction claimed for the sub-section would occasion difficulties in the collection of the revenue, and necessitate the settlement of the rights of the parties litigiously. Assuming a bequest is made for some foreign charitable purpose, a Court would be called upon to inquire and determine whether the proposed object would be good as a charitable purpose in Australia, and, if so, whether it is good according to the law of the country in which the gift is to be applied. The Act in question was passed during the War, and the exemption provided by sec. 9 in favour of the estates of certain soldiers and sailors who served against enemy countries presents some incongruity with an exemption in favour of a charitable purpose in an enemy country.

I do not propose to speculate as to the possibility of a different construction of the sub-section. I base my opinion upon the language used. The so-called generality of the sub-section is restricted not merely by the considerations I have referred to, but also by the language used in the Act itself indicating a limitation of operation. Take, for example, the words "public educational

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purposes," which include the establishment or endowment of an educational institution for the benefit of the public or a section of the public. What public? Surely not the public of Germany, Bulgaria, Turkey or China. My answer is: Certainly not, but the public or a section of the public of Australia. These words, in my opinion, colour the other words used in the sub-section, and lead me to the conclusion that the Commissioner's contention is correct.

In my opinion the answer to the first question is Yes; and to the second, No.

First question answered in the negative, and second question in the affirmative.

Solicitors for the appellants, *Dibbs, Parker & Parker.*

Solicitor for the respondent, *Gordon H. Castle,* Crown Solicitor for the Commonwealth.

B. L.