[PRIVY COUNCIL.]

CHESTERMAN AND OTHERS . . . APPELLANTS;

AND

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

ON APPEAL FROM THE HIGH COURT.

PRIVY COUNCIL.* 1925. Nov. 19.

Estate Duty—Exemption—Gifts for "religious, scientific, charitable or public educational purposes"—What are "charitable purposes"—Estate Duty Assessment Act 1914-1916 (*No.* 22 *of* 1914—*No.* 29 *of* 1916), *sec.* 8.

Sec. 8 of the *Estate Duty Assessment Act* 1914-1916 provides that "(1) Subject to this Act, estate duty shall be levied and paid upon the value, as assessed under this Act, of the estates of persons dying after the commencement of this Act. . . . (5) 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, that the expression "charitable purposes" in sub-sec. 5 is used in its technical legal sense, and, therefore, that a gift of a fund to provide prizes for competitions in physical, moral and literary excellence, without regard to the pecuniary means of the competitors, was for charitable purposes within the meaning of the sub-section.

Decision of the High Court: *Chesterman* v. *Federal Commissioner of Taxation*, (1923) 32 C.L.R. 362, reversed.

APPEAL from the High Court to the Privy Council.

This was an appeal by the appellants from the decision of the High Court: *Chesterman* v. *Federal Commissioner of Taxation* (1).

* Present—Lord Dunedin, Lord Sumner, Lord Wrenbury, Lord Darling and Lord Salvesen.

(1) (1923) 32 C.L.R. 362.

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The judgment of their Lordships, which was delivered by Lord WRENBURY, was as follows :—

This is an appeal by special leave from an order of the High Court of Australia dated 6th June 1923, and from an order of the same Court dated 9th November 1923, whereby the Court dismissed an appeal by the appellants, the executors of Peter Stuckey Mitchell, against an assessment made by the respondent on the appellants under the *Estate Duty Assessment Act* 1914-1916 of the Commonwealth of Australia in respect of estate duty claimed to be payable to the respondent by the executors in respect of a certain portion of the estate.

The question is as to the true meaning and construction of the word " charitable " in sec. 8 (5) of the Act, which is as follows: " (5) 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." There is nothing further in the Act relevant to the question for decision unless it be found in sec. 8 (8), which is as follows : " In this Act, ' public educational purposes ' includes the establishment or endowment of an educational institution for the benefit of the public or a section of the public."

The testator by his will bequeathed the residue of his estate upon trusts under which prizes were to be awarded to various classes of persons, military, naval and civil, and of both sexes, the merit of the candidate to be ascertained by various physical, moral and literary tests. The provisions of the will are very voluminous. It is unnecessary to set them out here at length. Their Lordships find this statement of their general nature sufficient for the present purpose. These trusts are in the will and codicils referred to as the " Peter Mitchell Trust."

The appellants have obtained an order from the Equity Court of the State of New South Wales on an originating summons taken out by them for the purpose of deciding the question whether the gift of the Peter Mitchell Trust was a valid charitable gift. This order decides that the Peter Mitchell Trust is valid for all purposes. This is not disputed before their Lordships. The question for decision is whether within the language of the above section of the

Act the Peter Mitchell Trust is "for charitable purposes" and consequently exempt from estate duty, or whether it is for "public educational purposes" and exempt upon that ground. The question as stated in the case for the opinion of the Full Court of the High Court of Australia was:—"Question 1: Is the part of the estate referred to in the said case stated which is subject to the Peter Mitchell Trust property devised or bequeathed to" (*sic*) "religious, scientific, charitable or public educational purposes within the meaning of the *Estate Duty Assessment Act* 1914-1916, sec. 8 (5)?" The order under appeal answered this question in the negative. The executors appeal.

The appellants contend that the word "charitable" in the Act bears its technical legal meaning as in the statute of Elizabeth. The respondent contends that it bears its popular meaning, which involves the idea of assisting poverty or destitution and which may perhaps be expressed by the word eleemosynary.

In approaching this question the starting-point is found in *Commissioners for Special Purposes of the Income Tax* v. *Pemsel* (1), in the House of Lords, and in Lord *Macnaghten's* words at p. 580: "In construing Acts of Parliament, it is a general rule . . . that words must be taken in their legal sense unless a contrary intention appears." In looking to see whether in this Act a contrary intention appears their Lordships find nothing to assist them in sec. 8 (8). That sub-section does no more than enlarge (if indeed it were required for that purpose) the meaning of the words "public educational purposes" in sec. 8 (5). It remains to consider the words of sec. 8 (5). Upon those words the argument is that the word "charitable" is found in a context from which it is to be inferred that it bears the popular and not the technical meaning; that it bears the meaning and is limited to the meaning which involves the idea of relief from poverty; that it means eleemosynary; that it does not bear the legal meaning expressed by Lord *Macnaghten* in *Pemsel's Case* (2) by the words "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." It is contended that the word, if construed in

(1) (1891) A.C. 531.

(2) (1891) A.C., at p. 583.

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the legal sense, is either pleonastic in that it is redundant and is not required to express the idea intended to be conveyed, or is tautologous and is a needless repetition of something that is said elsewhere. Their Lordships do not find this argument to be well founded. Take, for instance. the first word "religious." It is not all religious purposes that are charitable. Religious purposes are charitable only if they tend directly or indirectly towards the instruction or the edification of the public (*Cocks* v. *Manners* (1)). The word "charitable" in the Elizabethan sense covers a wider field than the word "religious." To express the point in a few words, the word "charitable" in the Elizabethan sense is larger and more comprehensive than the other words in the context. It includes, no doubt, the subject matters expressed by those other words, and in that sense may be said to be redundant if understood in the technical sense in that it is repetition. But it adds something to those words. There is overlapping, no doubt; but if it be read in its popular sense there is also overlapping. The four words are not mutually exclusive. As Lord *Herschell* said in *Inland Revenue Commissioners* v. *Scott* (2), little weight is to be attached to the mere fact that specific exemptions are found which would be covered by the wider general word. Take, for instance, the word "religious." If the purpose were religious but not charitable, it would, under this Act, be exempt. If it were charitable but not religious, it would equally be exempt. The words in *Inland Revenue Commissioners* v. *Forrest* (3) approach very nearly to the words in the present case. Their Lordships find nothing in *Attorney-General for New Zealand* v. *Brown* (4) which conflicts with the view they are here expressing. The decision there was that the gift was to be construed as though the word "and" were "or," so that the words would be "charitable or benevolent or religious, &c."; that the fund might have gone to "benevolent" purposes which were not "charitable," and that consequently the gift was not a good charitable gift.

A further argument was addressed to their Lordships upon the words "public educational purposes," to the effect that exemption could be claimed upon those words, let the meaning of "charitable"

(1) (1871) L.R. 12 Eq. 574, at p. 585.
(2) (1892) 2 Q.B. 152, at p. 165.
(3) (1890) 15 App. Cas. 334.
(4) (1917) A.C. 393.

be what it will. Their Lordships do not find it necessary to express any opinion upon this point. The appellants, in their judgment, succeed upon the word "charitable." It is not necessary to go further.

It results that the appeal must be allowed, and the question set out in the commencement of this judgment must be answered in the affirmative and the matter remitted to the High Court of Australia so to modify the order of 9th November 1923 as to give effect to that answer. The appellants must have their costs in the Courts of Australia and before this Board.

Their Lordships will humbly advise His Majesty accordingly.

Cons *Bahr v Nicolay (No2)* 164 CLR 604 | Appl *Tsangaris v Gaymark Investments Pty Ltd* 82 FLR 269 | Foll *Evans v Davies* [1991] 2 QdR 498 | Foll/Appl *Smith v McKeough* (1953) 89 CLR 520

[HIGH COURT OF AUSTRALIA.]

BAIRD AND ANOTHER . . . . . APPELLANTS;
DEFENDANTS,

AND

MAGRIPILIS AND ANOTHER . . . . RESPONDENTS.
PLAINTIFFS,

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

H. C. OF A. 1925. SYDNEY, *Aug.* 17, 19, 20, 21; *Dec.* 17. Higgins, Rich and Starke JJ.

Crown Lands—Lease by tenant to alien—Illegality—Contract creating present interest in land—Agreement subject to provision for discharge—Land Act 1910 (*Q.*) (1 *Geo. V. No.* 15), *sec.* 94—*Leases to Aliens Restriction Act* 1912 (*Q.*) (2 *Geo. V. No.* 31), *secs.* 2, 3—*Sugar Works Act* 1911 (*Q.*) (2 *Geo. V. No.* 8), *sec.* 32—*Regulation of* 28*th October* 1915.

Practice—Supreme Court of Queensland—Conditions precedent—Action for specific performance—Readiness and willingness—Appeal—Jurisdiction of Full Court to draw inferences of fact not inconsistent with findings of jury—Finding of jury set aside—Rules of the Supreme Court 1900 (*Q.*), *Order XXII., rr.* 12, 14; *Order LXX., rr.* 11, 26.