[HIGH COURT OF AUSTRALIA.]

TEELE . . . . . APPELLANT;

AND

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

H. C. OF A. 1940.

MELBOURNE, *Feb.* 21; *Mar.* 8.

Latham C.J., Rich, Starke, Dixon and McTiernan JJ.

Estate Duty—Exemptions—Gift to "charitable or religious causes or institutions"—Estate Duty Assessment Act 1914-1928 (*No.* 22 *of* 1914—*No.* 47 *of* 1928), *sec.* 8 (5).*

By his will, a testator bequeathed the residue of his estate "to such charitable or religious causes or institutions in Victoria as my trustees in their absolute discretion may determine with power to build a memorial hall or any other building to be called 'The Edmund Henry Chown Memorial'."

Held that estate duty was assessable and payable on the residuary estate so bequeathed as the gift did not fall within the exemptions set out in sec. 8 (5) of the *Estate Duty Assessment Act* 1914-1928.

CASE STATED.

Edmund Henry Chown died on 6th August 1938, and probate of his will dated 4th July 1928 and two codicils thereto dated respectively 4th May 1938 and 7th June 1938 was granted to Edward George Creswick Teele, the executor and trustee named in the said will, by the Supreme Court of Victoria in its probate jurisdiction.

The Federal Commissioner of Taxation caused an assessment to be made of the value of the estate of the testator for the purpose of

* Sec. 8 (5) of the *Estate Duty Assessment Act* 1914-1928 provides: "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, or public educational purposes in Australia or to a public hospital or public benevolent institution in Australia or to a fund established and maintained for the purpose of providing money for use for such institutions or for the relief of persons in necessitous circumstances in Australia."

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ascertaining the amount upon which estate duty should be levied in accordance with the *Estate Duty Assessment Act* 1914-1928, and by notice of assessment dated 18th January 1939 the commissioner gave notice in writing of the assessment to the executor. The commissioner, having caused the assessment to be altered by notice of amended assessment dated 8th February 1939, gave to the executor notice of such alteration. In the assessment as amended the commissioner assessed the dutiable value of the estate at the amount of thirty-four thousand nine hundred and four pounds. In assessing the value of the estate for duty the commissioner included therein the value of that portion of the residuary estate of the testator which was bequeathed under the will " to such charitable or religious causes or institutions in Victoria as my trustees in their absolute discretion may determine with power to build a memorial hall or any other building to be called the Edmund Henry Chown Memorial," the value of which portion of the residuary estate was twenty-two thousand one hundred and eighty-six pounds.

The executor, being dissatisfied with the assessment, duly lodged with the commissioner an objection in writing dated 15th February 1939 against the same as follows :—

" i. The will of the said deceased provides *inter alia* as follows : —' The residue of my estate I bequeath as follows : Firstly one thousand pounds to establish two cots in the Children's Hospital to be called the " Edmund Henry Chown Cot " and the " Amelia Charlotte Chown Cot," and the balance to such charitable or religious causes or institutions in Victoria as my trustees in their absolute discretion may determine with power to build a memorial hall or any other building to be called the Edmund Henry Chown Memorial.'

" ii. Sec. 8, sub-sec. 5 of the *Estate Duty Assessment Act* 1914-1928 provides : ' 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, or public educational purposes in Australia or to a public hospital or public benevolent institution in Australia or to a fund established and maintained for the purpose of providing money for use for such institutions or for the relief of persons in necessitous circumstances in Australia.'

" iii. The bequest of the residue of this estate ' to charitable or religious causes or institutions in Victoria,' is enforceable against me as administrator by the Attorney-General for the State of Victoria acting on behalf of the charitable or religious causes or institutions, and the sole discretion which is reposed in me is the naming of the causes or institutions which are to be the recipients of the residue and the allocation to them of their respective shares.

" iv. I consider that no cause or institution in Victoria can be regarded as ' charitable or religious ' unless the same comes within the definition contained in sec. 8, sub-sec. 5 of the *Estate Duty Assessment Act* 1914-1928, viz.: (*a*) ' for religious, scientific or public educational purposes in Australia ' ; (*b*) ' to a public hospital or public benevolent institution in Australia ' ; (*c*) ' for the relief of persons in necessitous circumstances in Australia.'

" v. For the foregoing reasons I consider that no estate duty should be assessed or payable on the sum of twenty-eight thousand and fifty-one pounds, being the residuary estate other than the sum of one thousand pounds bequeathed to the Children's Hospital and which has been exempted from duty by the assessment."

The commissioner considered the objection and wholly disallowed the same and gave to the executor written notice of his decision disallowing the said objection. The executor, being dissatisfied with the decision on the objection, appealed to the High Court of Australia and prayed the court to order that the assessment be made on a dutiable value of six thousand eight hundred and fifty-three pounds on the grounds appearing in the notice of objection.

On 31st October 1939 *Latham* C.J. stated a case for the opinion of the Full Court of the High Court upon the following question :—

> Is estate duty under the *Estate Duty Assessment Act* 1914-1928 assessable or payable upon so much of the residuary estate of the deceased as was bequeathed " to such charitable or religious causes or institutions in Victoria as my trustees in their absolute discretion may determine with power to build a memorial hall or any other building to be called the Edmund Henry Chown Memorial " ?

Joske, for the appellant. The word " charitable " in the bequest is to be given its popular meaning, i.e., " elemosynary " (*Commissioners for Special Purposes of Income Tax* v. *Pemsel* (1), per Lord

(1) (1891) A.C. 531, at p. 572.

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Herschell; *Chesterman* v. *Federal Commissioner of Taxation* (1)). [He referred to sec. 8 (5) of the *Estate Duty Assessment Act* 1914-1928.] "Charitable" in its legal sense would not come within the exemption, but in the bequest the word is narrower by its collocation with "religious" (*Attorney-General for New Zealand* v. *Brown* (2)).

[RICH J. referred to *Public Trustee (N.S.W.)* v. *Federal Commissioner of Taxation* (3).]

If any portion of the gift is invalid, then the remainder is saved by sec. 131 of the *Property Law Act* 1928. "Public charity" has been defined in *Shaw* v. *Halifax Corporation* (4). "Charitable institution" need not be a building but may be any association for relief of poverty or distress. The history of sec. 8 (5) is adverted to in the cases cited above. *Chesterman's Case* (5), in interpreting "charitable," was interpreting the sub-section prior to its amendment in 1928. Here we are dealing with a bequest where a testator would have in mind the popular meaning (*Perpetual Trustee Co. Ltd.* v. *Federal Commissioner of Taxation* (6)). The amendment was made in 1928 to bring in the popular meaning of "charitable" (*Young Men's Christian Association* v. *Federal Commissioner of Taxation* (7)). A taxing Act must be read in favour of the taxpayer, and it was never intended that a bequest such as this was to be taxed. Here the bequest was for "religious purposes" or to "a public benevolent institution" or "for the relief of persons in necessitous circumstances." The gift itself establishes and maintains a fund.

Tait, for the respondent. The Privy Council in *Chesterman's Case* (5) gave "charitable" its proper legal meaning. The word "public" has been interpreted in Victoria in *In re Income Tax Acts* [*No.* 1] (8). "Relief of persons in necessitous circumstances" must be attached to the preceding phrase in sec. 8 (5) "to a fund established and maintained" (*Public Trustee (N.S.W.)* v. *Federal*

(1) (1923) 32 C.L.R. 362; (1926) A.C. 128, at p. 131.
(2) (1917) A.C. 393.
(3) (1934) 51 C.L.R. 75.
(4) (1915) 2 K.B. 170, at pp. 180, 182.
(5) (1926) A.C. 128.
(6) (1931) 45 C.L.R. 224, at pp. 231, 233.
(7) (1926) 37 C.L.R. 351, at pp. 358, 359.
(8) (1930) V.L.R. 211.

Commissioner of Taxation (1)). In the will, the word "charitable" must be given its legal meaning. [He was stopped.]

Joske, in reply.

Cur. adv. vult.

March 8.

The following written judgments were delivered :—

LATHAM C.J. I agree with the judgment of *Dixon* J.

RICH J. I have had the advantage of reading the judgment of *Dixon* J. and agree with it.

STARKE J. Case stated under the *Estate Duty Assessment Act* 1914-1928. The question for determination is whether estate duty is assessable or payable upon so much of the residuary estate of Edmund Henry Chown deceased as was bequeathed "to such charitable or religious causes or institutions in Victoria as my trustees in their absolute discretion may determine with power to build a memorial hall or any other building to be called 'The Edmund Henry Chown Memorial'."

It is provided by sec. 8 (5) of the *Assessment Act* that estate duty shall not be assessed or payable upon so much of the estates of persons dying after the commencement of the Act as is devised or bequeathed for religious, scientific or public educational purposes in Australia or to a public hospital or public benevolent institution in Australia or to a fund established and maintained for the purpose of providing money for use for such institutions or for the relief of persons in necessitous circumstances in Australia.

It was argued that the gift in favour of charitable institutions in Victoria was in effect a gift to public benevolent institutions because upon a proper interpretation of the will the testator confined his gift to institutions organized for the relief of poverty, sickness, destitution, or helplessness (*Perpetual Trustee Co. Ltd.* v. *Federal Commissioner of Taxation* (2)). But the reasoning of the Judicial Committee in *Chesterman* v. *Federal Commissioner of Taxation* (3) disposes of the argument. The word "charitable" must be given

(1) (1934) 51 C.L.R. 75.
(2) (1931) 45 C.L.R. 224.
(3) (1926) A.C. 128.

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its technical meaning, as in the Statute of Elizabeth, and is not confined to public benevolent institutions.

Further, it was contended that the gift was exempt because it was, in effect, a gift for the relief of persons in necessitous circumstances in Australia. The gift is wider, I think, in its terms, and in any case it is not a gift for the relief of persons in necessitous circumstances in Australia that is exempt but a gift to a fund established and maintained for the relief of such persons (*Perpetual Trustee Co. Ltd.* v. *Federal Commissioner of Taxation* (1); *Public Trustee (N.S.W.)* v. *Federal Commissioner of Taxation* (2)). The deceased, Chown, did not by his will establish or provide for the maintenance of any such fund.

The question stated should be answered in the affirmative.

DIXON J. By his will the testator bequeathed the balance of his residuary estate to such charitable or religious causes or institutions in Victoria as his trustees in their absolute discretion might determine with power to build a memorial hall or other building to be called by his name. The question for decision is whether so much of his estate as is disposed of by this bequest is liable to estate duty or falls within the exemption given by sec. 8 (5) of the *Estate Duty Assessment Act* 1914-1928. To fall within that exemption a bequest must be "for religious, scientific, or public educational purposes in Australia or to a public hospital or public benevolent institution in Australia or to a fund established and maintained for the purpose of providing money for use for such institutions or for the relief of persons in necessitous circumstances in Australia."

In my opinion the testator's residuary bequest goes far beyond the bodies and purposes enumerated in the sub-section. The word "charitable" in the gift should, I think, receive its prima-facie legal meaning, and the gift therefore covers any object which might be the subject of a valid charitable trust. "Charitable" is a word of known legal import, and unless some sufficient reason is found in context, subject matter or otherwise it should, in a will, be given that meaning. It was said that the mention of "religious" causes showed that the testator did not mean "charitable" to bear its

(1) (1931) 45 C.L.R. 224, at p. 232. (2) (1934) 51 C.L.R. 75.

prima-facie meaning, because religious causes were covered by that meaning and the express reference to them would be redundant. The statement that all religious causes are charitable is not perhaps strictly accurate, but passing that consideration by, I do not think that the logical redundancy of the reference to " religious causes " is a sufficient ground for denying its legal meaning to the word " charitable." A desire on the part of the testator to make clear or to emphasize his intention that religious causes should be considered by his trustees is enough to account for the presence of the words. In any case arguments of construction founded on tautology or redundancy are never strong.

The reason I have given is enough to answer the claim for exemption. But, even if the word " charitable " in the bequest were to receive a narrow meaning, its so-called popular meaning, I do not think that the bequest would be brought within the boundaries of the exemption. What exactly are the limits of the popular meaning of " charitable " is by no means clear: See *Hobart Savings Bank and Launceston Bank for Savings* v. *Federal Commissioner of Taxation* (1). But I cannot see how any meaning could be placed upon the phrase " charitable causes " narrow enough to confine the bequest to the institutions and purposes mentioned in sub-sec. 5 of sec. 8. I cannot accept the view that the final words of that sub-section, viz., " for the relief of persons in necessitous circumstances in Australia " are not governed by the words " established and maintained for the purpose of providing money." It was disposed of, in my opinion, by *Public Trustee (N.S.W.)* v. *Federal Commissioner of Taxation* (2).

The question in the case stated should be answered: Yes. The costs should be costs in the appeal.

McTiernan J. I agree that the question in the stated case should be answered: Yes.

The appellant claims that the balance of the residue of the estate is exempt from estate duty under sec. 8 (5) of the *Estate Duty Assessment Act* 1914-1928 because it is given either to a public

(1) (1930) 43 C.L.R. 364, at pp. 372, 373, 374.
(2) (1934) 51 C.L.R. 75.

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benevolent institution in Australia or for the relief of persons in necessitous circumstances. In my opinion, the objects upon which the testator has empowered his trustees to expend the balance of the residue of his estate are too wide to come within the exemption. Even if the word " charitable " should be read in the context of the will as synonymous with eleemosynary, as the appellant contends, it is clear that the trustees have a discretion to apply the balance of the residue to objects wider than those comprehended by the term " public benevolent institution." It will be observed that causes as well as institutions come within the scope of the trustees' discretion ; and this is enough to deprive the gift of the benefit of the exemption which is limited to a public benevolent institution. Nor can the gift of the balance of the residue be held to be exempt from estate duty as one made for the relief of persons in necessitous circumstances. One reason is that the gift is not made to a fund established and maintained for that purpose. The case of *Public Trustee (N.S.W.)* v. *Federal Commissioner of Taxation* (1) decides that the concluding words of sec. 8 (5) are attached to the words " to a fund established and maintained." In the instant case the gift is not made to any fund established or maintained for that purpose.

Question in the case answered: Yes. Costs of case to be costs in the appeal. Case remitted to Latham C.J.

Solicitors for the appellant, *Joske & Burbidge.*

Solicitors for the respondent, *H. F. E. Whitlam,* Crown Solicitor for the Commonwealth.

O. J. G.

(1) (1934) 51 C.L.R. 75.