steeper than 1 in 9. In this case the average gradient of the whole of the haulage road on which the respondent was walking, and its actual gradient at and for much more than 100 yards on each side of the spot where the accident occurred, did not exceed 1 in 12, and the case therefore comes within the exception contained in clause (*b*). The appeal should be dismissed.

Appeal dismissed with costs.

Solicitors for the appellant, *A. J. McLachlan & Co.*

Solicitor for the respondent, *A. A. Lysaght*, Wollongong, by *Makinson & d'Apice.*

B. L.

Foll *Metro Fire Brigades Board v FCT* 1 ATR 1137

Foll *Metro Fire Brigades Board v FCT* 97 ALR 335

Foll/Appl *Kelly v Municipal Council of Sydney* (1920) 28 CLR 203

[HIGH COURT OF AUSTRALIA.]

SWINBURNE . . . . . APPELLANT;

AND

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

Income Tax (Commonwealth)—Deduction—Gift to public charitable institution—Educational institution—Statute—Interpretation—Exemption from taxation—Matter in doubt—Income Tax Assessment Act 1915-1918 (*No.* 34 *of* 1915—*No.* 18 *of* 1918), *sec.* 18.

Sec. 18 (1) of the *Income Tax Assessment Act* 1915-1918 provides that in calculating the taxable income of a taxpayer there shall be deducted from the total assessable income derived by him from all sources in Australia (*inter alia*) "(*h*) (iii.) gifts exceeding five pounds each to public charitable institutions in Australia."

Held, by *Isaacs*, *Gavan Duffy*, *Rich* and *Starke* JJ., and with doubt by *Knox* C.J., that the term "public charitable institution" should be construed as meaning a public institution which is charitable in the sense that it affords relief to persons in necessitous or helpless circumstances.

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Per Knox C.J. : Where the construction of a statutory provision conferring the privilege of exemption from taxation is doubtful, the Court should reject that construction which would imply the extension of the class exempted if the language reasonably admits of another interpretation.

APPEAL from the Federal Commissioner of Taxation.

On the hearing of an appeal by George Swinburne from an assessment of him for income tax by the Federal Commissioner of Taxation, a case was stated by *Knox* C.J., which was substantially as follows :—

1. The appellant, George Swinburne (hereinafter called "the taxpayer"), on 30th September 1918 pursuant to sec. 28 (1) of the *Income Tax Assessment Act* 1915-1918 furnished to the Commissioner of Taxation (hereinafter called "the Commissioner") a return setting forth a statement of the income derived by him during the financial year ending on 30th June 1918.

2. From the said return the Commissioner caused an assessment to be made for the purpose of ascertaining the taxable income upon which income tax should be levied upon the taxpayer for the financial year ending on 30th June 1919. In the said assessment the Commissioner disallowed the claim of the taxpayer that in calculating the taxable income of the taxpayer the sum of £1,000 should be deducted from the total assessable income, such sum being the amount of a gift which was made by the taxpayer to the Swinburne Technical College during the year ending on 30th June 1918 and was verified to the satisfaction of the Commissioner.

3. On 14th February 1919 the Commissioner caused notice in writing of the said assessment to be given to the taxpayer.

4. On 14th March 1919 the taxpayer, being dissatisfied with the said assessment, lodged with the Commissioner an objection in writing against the assessment, and therein stated that the reason for the objection was that for the purpose of ascertaining the taxable income of the taxpayer the sum of £1,000 should have been deducted from the total assessable income as being the amount of a gift to a public charitable institution in Australia, viz., the said Swinburne Technical College. On 29th April 1919 the Commissioner gave to the taxpayer written notice wholly disallowing the objection.

5. The taxpayer appealed to the High Court pursuant to the provisions of sec. 37 (4) of the *Income Tax Assessment Act* 1915-1918.

6. The Swinburne Technical College is a company limited by guarantee incorporated in the State of Victoria in 1908 pursuant to the Companies Acts of the said State then in force. A copy of the memorandum of association and of the articles of association of the Swinburne Technical College is annexed hereto and forms part of this case.

7. The said Company established a Technical College at Hawthorn, and there gives technical instruction to students. The scale of fees hereinafter mentioned indicates the subjects in which such instruction is given.

8. The Company charges students for their instruction at the said College according to fixed scales.

9. A certain number of students hold scholarships granted by the Company which cover the amount of their fees. These students do not exceed five per centum of the whole number of students (junior and senior) attending the College.

10. A certain number of students hold scholarships on nomination granted by the Government, and receive free tuition as a condition of the Government granting pecuniary aid to the Company. These students do not exceed five per centum of the whole number of students (senior and junior) attending the College.

11. For the financial year ending on 30th June 1918, (*a*) the income of the Swinburne Technical College was less than its expenditure, (*b*) the income amounted to £7,799 19s., and was derived as follows: from fees paid by students, £1,774 8s.; from private subscriptions, £3 11s.; from voluntary grants by municipalities, £170; from grants made by the Government of the State of Victoria, £5,800; from rent account, £52.

12. During the said financial year ending on 30th June 1918 the cost of instruction of the students was greater than the fees paid by them.

13. The appeal coming on for hearing, the Court states this case for the opinion of the Full Court upon the following questions arising in the appeal, and which in the opinion of the Court are questions of law:—

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(*a*) Is the Swinburne Technical College a public charitable institution within the meaning of sec. 18 (1) (*h*) (iii.) of the *Income Tax Assessment Act* 1915-1918 ?

(*b*) Is the appellant entitled to claim and be allowed as a deduction in his return the said sum of £1,000 given by him to the said College ?

The memorandum of association of the appellant Company contained the following provisions :—

1. The name of the Company is "The Swinburne Technical College."

2. The objects for which the Company is established are: (*a*) to incorporate a College in Hawthorn to be known as "The Swinburne Technical College," and to commence and carry on the work thereof, and to hold all the real and personal property thereof; (*b*) to improve education generally, and especially to promote technical education, and to facilitate the attainment of a knowledge of handicrafts, arts, sciences and languages, by the establishment of classes, workshops, laboratories, reading-rooms, libraries and museums, and by such other means as the Council of the College may direct; (*c*) to purchase, take on lease or in exchange, hire or otherwise acquire any real or personal property, and to construct, maintain or alter any buildings or works necessary or convenient for the purposes of the College; (*d*) to borrow or raise or secure the payment of money in such manner as the College may think fit, and in particular by the issue of debentures, perpetual or otherwise, charged upon all or any of the property of the College, both present and future; (*e*) to enter into any arrangement which the College may think fit with the Council of any municipality for the support or partial support of the College by such Council; (*f*) to co-operate with any other college or institution having the like or similar objects; (*g*) to do all such other things as are incidental or conducive to the attainment of the above objects.

3. The income and property of the College, whencesoever derived, shall be applied solely towards the promotion of the objects of the College, as set forth in this memorandum of association, and no portion thereof shall be paid or transferred directly or indirectly

by way of dividend, bonus, or otherwise howsoever, by way of profit to the members of the College.

4. The third paragraph of this memorandum is a condition on which a licence is granted by the Attorney-General of the State of Victoria to the College, in pursuance of sec. 181 of the *Companies Act* 1890.

5. If any member of the College pays or receives any dividend, bonus or other profits in contravention of the third paragraph of this memorandum, his liability shall be unlimited.

7. If, upon the winding up or dissolution of the College, there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the College, but shall be given or transferred to some other institution or institutions having objects similar to the objects of the College, to be determined by the members of the College at or before the time of dissolution, or in default thereof, by such Judge of the Supreme Court as may have or acquire jurisdiction in the matter.

Pigott, for the appellant. The College is a "public charitable institution" within the meaning of sec. 18 (1) (*h*) (iii.) of the *Income Tax Assessment Act* 1915-1918. The word "charitable" is there used in the technical sense in which it is used in the Statute 43 Eliz. c. 4, which includes an institution for the advancement of education. The memorandum of association shows that the funds of the Company must be used solely for that purpose. The College is "public" because it is open to any member of the public, the fees being used for the purpose of education only and the Government contributing a large sum towards it. The College is as much a public charitable institution as is the University. [Counsel referred to *Trustees, Executors and Agency Co.* v. *Acting Federal Commissioner of Taxation* (1); *Dilworth* v. *Commissioner of Stamps* (2); *Blake* v. *London Corporation* (3); *Commissioners of Inland Revenue* v. *Scott*; *In re Botham Ward Strays, York* (4); *Commissioners for Special Purposes of Income Tax* v. *Pemsel* (5).]

(1) 23 C.L.R., 576, at p. 586.
(2) (1899) A.C., 99.
(3) 19 Q.B.D., 79.
(4) (1892) 2 Q.B., 152.
(5) (1891) A.C., 531.

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[KNOX C.J. referred to *St. Andrew's Hospital, Northampton*, v. *Shearsmith* (1).

[ISAACS J. referred to *Trustees of Queen's College* v. *Melbourne Corporation* (2).]

Gregory, for the respondent. In sec. 18 (1) (*h*) (iii.) the word "charitable" is not used in its technical sense but in its popular sense, and the term "charitable institution" means an institution whose purpose is charity in the sense that it is for the relief of the poor in some form. In sec. 11 (1) (*d*) a distinction is drawn between "religious, scientific, charitable" and "educational" institutions. There the word "charitable" is used in the same sense as in sec. 18 (1) (*h*) (iii.). This institution is not "public." There is nothing to prevent the Company from going into liquidation and transferring its funds to an institution which is not charitable. [He referred to *Tudor on Charities*, p. 194.]

Pigott, in reply, referred to *In re Davis*; *Hannen* v. *Hillyer* (3).

Cur. adv. vult.

March 1.

The following judgments were read :—

KNOX C.J. After reading the judgment about to be delivered I still feel some doubt whether the word "charitable" in the phrase "public charitable institutions" used in sec. 18 (1) (*h*) (iii.) of the *Income Tax Assessment Act* 1915-1918 should not be construed as having the meaning which has been attributed to the same word when used in the Statute of Elizabeth. The rule as to construction of a statutory provision conferring the privilege of exemption from taxation is stated by Lord *Young* in *Hogg* v. *Parochial Board of Auchtermuchty* (4) thus: "I think it proper to say that, *in dubio*, I should deem it the duty of the Court to reject any construction of a modern Statute which implied the extension of a class privilege of exemption from taxation, provided the language reasonably admitted of another interpretation."

(1) 19 Q.B.D., 624.
(2) (1905) V.L.R., 247; 26 A.L.T., 191.
(3) (1902) 1 Ch., 876.
(4) 7 Rettie, 986.

Applying this rule, I concur in the answer proposed to be given to the question submitted in the special case.

ISAACS, GAVAN DUFFY, RICH AND STARKE JJ. (read by ISAACS J.). This is a case stated by the learned Chief Justice on an appeal by a taxpayer, under the Commonwealth *Income Tax Assessment Act* 1915-1918, from the decision of the Commissioner. The matter in contest is very short. The taxpayer contributed during the taxing year the sum of £1,000 to the Swinburne Technical College; and the question is whether, in calculating his taxable income for the year, he is entitled to a deduction of the sum so contributed from his total assessable income. The claim for deduction is rested on the provisions of sec. 18 of the Act, which by sub-sec. 1, par. (*h*) (iii.), includes among statutory deductions "gifts exceeding five pounds each to public charitable institutions in Australia if the gifts are verified to the satisfaction of the Commissioner." The most important question we have to determine is as to the proper legal interpretation of the words "public charitable institutions" as they occur in that paragraph. As to this the taxpayer contends that in that expression the word "charitable" should be construed in the wide signification of the Elizabethan Act; while the Commissioner contends that that word in its statutory setting has the narrower meaning of ordinary parlance, which, in effect, we take to be beneficent assistance to the needy or helpless. The argument before us extended also to consideration as to whether, assuming the taxpayer's construction was correct, the Constitution of the College is such as to make its property subject to an inalienable trust to the public, and whether in the circumstances, having regard to its memorandum of association, the College would come within the terms of the enactment so construed.

It is only necessary to deal with the broad question of construction. No rigid rule can be applied for the determination of that question. As said by Lord *Herschell* in *Commissioners of Inland Revenue* v. *Scott* (1) in relation to a very similar question, "each Statute must be looked to by itself for the purpose of ascertaining its meaning." But it is always the duty of a Court to give to words in a Statute their natural signification unless, on a consideration of

(1) (1892) 2 Q.B., at p. 165.

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the Statute as a whole, some other meaning is seen to be intended (*Watney, Combe, Reid & Co.* v. *Berners* (1)). The word "charitable" taken alone is open to various significations. In the phrases "a charitable donation" and "a charitable view of conduct" quite different meanings are conveyed by the same word. In a Statute where the phrase "charitable use" or its equivalents "charitable trust" and "charitable purpose" are used, a technical meaning is now the primary and, therefore, the natural meaning, requiring context to vary it. Lord *Macnaghten* has stated the fact, and the reason for it, in *Commissioners for Special Purposes of Income Tax* v. *Pemsel* (2). But no technical signification has attached itself, at all events in Australia, to the expression "public charitable institution." We are not to pull the phrase to pieces and consider the various meanings of its component parts, but we have to read the composite expression as written, and if, when so read, it has a known signification, that should *primâ facie* be taken to be its meaning in the Statute. Now, in Australia (and the Act we are considering is directed to Australians) the expression "public charitable institution," so far from having the technical meaning coextensive with the Elizabethan Statute, is used both popularly and officially as denoting an institution which—assuming its "public" character, a matter unnecessary for us here to delimit—is "charitable" in the sense of affording relief to persons in necessitous or helpless circumstances, and in most instances, at all events if required, gratuitously. That that is the popular understanding of the phrase is a matter of common knowledge, and so within our judicial cognizance.

That conclusion is confirmed by various Acts of Parliament in various States, which constitute strong evidence of the general sense in which the term is understood.

The Commonwealth enactment we are construing was passed in 1918 by Act No. 18, sec. 14 (*f*). Prior to that date the following State Statutes had been passed. (We mention in order of date only those material Acts that we have been able to find.) In 1875, in South Australia, Act No. 7: by sec. 1 of which the phrase "public charitable institutions" was defined to mean "public hospitals,

(1) (1915) A.C., 885, at p. 893. (2) (1891) A.C., at pp. 580-581.

destitute and lunatic asylums, orphanages, reformatories, and other institutions of the like nature, whether local or general: Provided that such institutions are established by or pursuant to Act of Parliament, and supported wholly or in part out of the general revenue." In 1885, in Queensland, Act No. 8, passed for the management of public charitable institutions: by sec. 2 of which it was provided that the Governor might by Order in Council declare any public institution which was maintained wholly or in part at the public expense for the reception, maintenance and care of indigent persons, or other persons requiring medical or other aid or comfort, not being a hospital for the insane or a hospital established under the Statutes relating to hospitals, and not being an orphanage within the meaning of the *Orphanages Act of* 1879, to be a public charitable institution for the purposes of the Act. In 1888, in Tasmania, Act No. 8: by which "charitable institution" was defined as "any hospital established for the treatment of the sick; any home or refuge for destitute or unfortunate persons; any institution for the gratuitous education or gratuitous maintenance and education of children; any society or association of persons established or associated for the purpose of raising and disbursing moneys for the relief or maintenance of indigent persons; and any other institution which the Attorney-General may certify as a fit and proper institution to be registered under this Act, but shall not include any institution incorporated under the provisions of any law now in force, or any institution subject to the provisions of any special Act of Parliament regulating the maintenance and management thereof, unless the context expresses the contrary." In 1901, in New South Wales, by Act No. 29, a consolidated Act was passed called the *Public Institutions Inspection Act*: it defined "public charity" as "any hospital, infirmary, orphan school, or charitable institution, which is wholly or in part supported by grants from the public revenue"; for those a Government inspector of public charities was to be appointed; then alongside these were enumerated institutions not included under the head "public charities," but regarded as other "public institutions"; they are mentioned in sec. 10 as "a mechanics' institution, school of arts, public library, literary society,

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or other similar institution," and for these inspection by a magistrate or other person resident is provided. In Victoria there is no similar general Act, but charitable institutions are dealt with in various language in different Acts: for instance, even the phrase "charitable purposes" now in the *Local Government Act* 1915, sec. 249 (2) (*i*), was held in 1905 to be used not in a technical but in a colloquial sense (*Trustees of Queen's College* v. *Melbourne Corporation* (1)); in 1907 by the *Income Tax Act* (No. 2090), and repeated in the Act of 1915, sec. 29, the phrase "charitable institution" is not used, but specific classes of public institutions are enumerated as entitling donors to deductions. In 1912, in South Australia, by Act No. 1078, replacing former Acts, the term "public charitable institution" is defined as in the Act of 1875. It should further be added, with reference to the statement in the special case that the College receives Government grants, that, having looked at the Victorian Appropriation Acts under which those grants are made, we find that the grant made by Parliament is under the heading of "Technical Schools."

The Federal Act, in adopting the same term "public charitable institutions in Australia," cannot, therefore, be taken as intending any meaning other than the generally accepted meaning in Australia unless its own structure indicates another meaning. There is no context to indicate a secondary meaning, and, therefore, we are of opinion that the meaning of the phrase contended for by the Commissioner is its true one. This renders any further consideration of the arguments unnecessary.

The questions stated in the special case should, therefore, be answered in the negative.

Appeal dismissed with costs.

Solicitors for the appellant, *J. M. Smith & Emmerton.*

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

B. L.

(1) (1905) V.L.R., 247; 26 A.L.T., 191.