

statutes applicable to the offence disable the public prosecutor from making his election under which of them he is to bring a prosecution, any more than the existence of a rule of the common law to which he might resort if he chose. I may also add that I am quite at a loss to see what bearing decisions in the Civil Court as to the liability of public officials for the wrongous acts of constables can have on the construction of a statute dealing with a criminal offence.

LORD JUSTICE-GENERAL—I concur.

LORD JUSTICE-CLERK—The contention of the appellant in this case as stated at the bar is based upon the view that the words of the statute “affairs or business” must relate to “mercantile affairs,” and cannot be applied to employment for state or municipal duties, in which no question of business in the ordinary sense is involved. I am quite unable to accept any such view of the statute for the Prevention of Corruption which was passed in 1906. That view is completely excluded by the 3rd sub-section of section 1, by which it is provided that “. . . [Quotes, *supra* in rubric] . . .”

A police constable is therefore plainly in the position of a person to whom the Act may apply. The sole question here therefore is, whether the complaint correctly describes the agency. Is the police constable correctly described as being the agent of the Chief-Constable, under whom he was serving at the time? Now, the position of the Chief-Constable is this, that he has delegated to him the power and duty of selecting and appointing all constables; that he has power to suspend or dismiss all ordinary constables, such as the constable whom it was attempted to bribe in this case; that the magistrates cannot interfere with him as regards engagement or suspension or dismissal; and that he being entrusted with the police duties falling on the municipal authority, and having engaged constables to carry out his duties of keeping order and dealing with crime, is in the active exercise of these powers through them. The constable in doing his duties on his beat is doing so because he is employed to do so by the Chief-Constable, and is responsible to him to do these duties faithfully, and to resist all attempts to seduce him into doing things contrary to his duty. I cannot doubt that the Magistrate was entitled to hold on the facts which he found proved that in law the constable was “acting for the Chief-Constable, and therefore, in the sense of the Prevention of Corruption Act 1906, was an agent.”

I agree entirely with the opinion of Lord Stormonth Darling, and do not think it necessary to say more.

LORD M'LAREN—I concur in Lord Stormonth Darling's opinion.

LORD KINNEAR—I agree in the opinions which have been delivered.

LORD LOW—I also agree.

LORD ARDWALL—I also concur in Lord Stormonth Darling's opinion.

LORD PEARSON was absent.

The Court answered the first question in the affirmative and dismissed the appeal.

Counsel for the Appellant—Crabb Watt, K.C.—Scott Brown. Agent—E. Rolland M'Nab, S.S.C.

Counsel for the Respondent—Solicitor General (Ure, K.C.)—A. M. Anderson. Agent—W. S. Haldane, W.S., Crown Agent.

HOUSE OF LORDS.

Thursday, February 6.

(Before the Lord Chancellor (Loreburn), Lord Macnaghten, Lord Robertson, and Lord Atkinson.)

MURDOCH'S TRUSTEES *v.* WEIR AND OTHERS.

(*Ante*, 44 S.L.R. 171, and 1907 S.C. 185.)

Succession—Uncertainty—Charitable Bequest—Trust—Persons “who have Shown Practical Sympathy in the Pursuits of Science.”

A testator directed that the residue of his estate should be employed in the relief of persons who, with other qualifications, had “shown practical sympathy in the pursuits of science.”

Per Lord Chancellor—“All that can be required is that the description of the classes to be benefited shall be sufficiently certain to enable men of common sense to carry out the expressed wishes of the testator. . . . Persons who have shown practical sympathy in an object obviously are persons who have given time or money, or made some sort of sacrifice to further it. I am satisfied the trustees, or failing them the Court, would find no difficulty in giving effect to the bequest.”

This case is reported *ante ut supra*.

Weir and others, the testator's next-of-kin, appealed to the House of Lords.

At delivering judgment—

LORD CHANCELLOR—The question in this case is whether a charitable bequest is to be treated as void for uncertainty. The bequest was of an unusual kind. Its object, according to the will, was to benefit persons who had shown practical sympathy in the pursuits of science. A number of conditions were prescribed. The recipients of this bounty were, among other things, to be widowers or bachelors of fifty-five years of age or upwards, whose lives had been characterised by sobriety and other specified virtues. They were to be indigent—a provision which stamps the bequest as charitable. These conditions were not really canvassed in argument, and need not be further considered, for no one of them is such as to impart to the bequest an uncertainty which will vitiate it in law.

The only point seriously made against this clause of the will is that the recipients of this charity were to be persons who had “shown practical sympathy in the pur-

suits of science." These words have been subjected to a rigorous criticism. What is science, it was asked, and how are we to know its bounds? What is sympathy in the pursuits of science, and when and how does it become practical? What are pursuits of science in the plural as distinguished from pursuit in the singular? The thought underlying this current of observation seems to be that if a bequest is to a class of persons, the class must be capable of being defined, and be defined so precisely that there can rarely be a doubt who does or who does not fall within it.

Now, there is no better rule than that a benignant construction will be placed upon charitable bequests. It is difficult to imagine a construction less benignant than that suggested by criticisms such as those to which I have alluded. Few indeed are the charitable bequests that could survive such an ordeal. The fact is that whenever anyone wishes to describe a class of people otherwise than by referring to their age, sex, birthplace, or similar facts capable of precise ascertainment, the language used must of necessity be general, and there must always be numerous cases on the border line. Deserving literary men who have not been successful, poor members of a particular trade, reduced gentlewomen, are examples of classes of persons who may certainly be benefited; but in each case exactly the same reasoning might be used as was used in the present case to destroy the validity of the will. There is no law requiring that kind and degree of certainty. All that can be required is that the description of the class to be benefited shall be sufficiently certain to enable men of common sense to carry out the expressed wishes of the testator. I have no doubt that this can be done here. Persons who have shown practical sympathy in an object obviously are persons who have given time or money or made some sort of sacrifice to further it. I am satisfied that the trustees, or failing them the Court, would find no difficulty in giving effect to the bequest. Accordingly I think that this appeal ought to be dismissed. The parties have agreed that the appellants are to have their judicial expenses of appeal out of the trust funds, the expenses as awarded in the Court of Session to remain unaltered. I think your Lordships may properly act upon this agreement.

LORD MACNAGHTEN—To my mind the difficulty in this appeal—and it is, I think, a real difficulty—is to discover any substance in the appellants' case.

The gift is a gift in perpetuity, to be administered by trustees for the benefit of bachelors and widowers, poor and aged, whose lives have been characterised by sobriety, morality, and industry, "and who have shown practical sympathy in the pursuits of science in any of its branches." This gift, it is said, is void for uncertainty. Why? The relief of those who suffer from the ills of poverty and the weight of advancing years is, by common consent, the peculiar province of charity in its popular as

well as in its legal sense. Unhappily, it is only too easy to recognise the aged and the poor, who are always with us. Then I suppose it has happened to most men to have formed an opinion, satisfactory at least to themselves, as to the moral and the general character of some applicant for some employment or other. Notwithstanding the ingenious argument of the learned counsel who spoke second, I cannot think that the task is really beyond the capacity of any ordinary individual.

There remains one other qualification to be considered. What is science? and what is "practical sympathy in the pursuits of science?"

Science, it was said, is so vague and comprehensive a term as to be unmeaning. In the view of the Lord Ordinary, "science" is a term of no definite or 'particular' meaning." That is certainly not the view of the Legislature. There are, for instance, many enactments in favour of institutions formed for the advancement of "science." The generality of the word has never prevented the Court from applying to the particular case before it the provisions of the Act under its consideration. But what is "practical sympathy?" "An altogether nebulous phrase," says the Lord Ordinary. It is not perhaps a happy expression. But if you follow the directions of the testator with a willing mind it is I think perfectly intelligible. The wish of the testator was to help those who are in need of help, and who may have done something, much or little, in the way of promoting some branch of science. Within the realms of science the field of choice is wide. But the testator has taken pains to provide competent judges. It is for the trustees to consider and determine the value of the service on which a candidate may rest his claim to participate in the testator's bounty.

I think that the case is much too clear for argument, and that the appeal must be dismissed.

LORD ROBERTSON—I must own that I think this a perfectly clear case. If it is said of anyone that he has shown practical sympathy in the pursuits of science, this is merely a roundabout way of saying that he has helped the pursuits of science, just as to show practical sympathy in A B means to help A B. Again, the word science embraces a wide but perfectly ascertainable range of subjects. Accordingly I consider the meaning of this testator to be plain and intelligible.

LORD ATKINSON—I concur.

Their Lordships dismissed the appeal.

Counsel for the Appellants (Respondents and Claimants)—Upjohn, K.C.—C. D. Murray. Agents—Murray, Lawson, & Darling, S.S.C., Edinburgh—Collyer, Bristow, & Company, London.

Counsel for the Respondents (Reclaimers and Real Raisers)—Clyde, K.C.—Cullen, K.C.—Stair Gillon. Agents—J. & J. Turnbull, W.S., Edinburgh—John Kennedy, Westminster.