*Privy Council Appeal No.* 138 *of* 1927.

**Laurence Arthur Adamson and others** - - - - *Appellants*

*v.*

**The Melbourne and Metropolitan Board of Works** - - - *Respondents*

FROM

## THE SUPREME COURT OF THE STATE OF VICTORIA.

---

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 15TH OCTOBER, 1928.

---

*Present at the Hearing:*

THE LORD CHANCELLOR.
VISCOUNT DUNEDIN.
VISCOUNT SUMNER.
LORD ATKIN.
CHIEF JUSTICE ANGLIN.

[*Delivered by* CHIEF JUSTICE ANGLIN.]

---

The Melbourne and Metropolitan Board of Works (respondents) brought this action in the Melbourne County Court to recover a sum of £65 19*s.* claimed as a balance due for water supplied by it to the defendants (appellants), who, by their defence, asserted a right to exemption from water rates as a "charitable institution" within the meaning of Section 94 of The Melbourne and Metropolitan Board of Works Act, 1915. That section reads as follows:—

> 94. In all the pipes to which any fire plug is fixed the Board shall provide and keep constantly laid on for use without charge, unless prevented by unusual drought or other unavoidable accident or during necessary repairs, a sufficient supply of water for the following purposes (that is to say):—for cleansing the sewers and drains, for cleansing and watering the streets, and for supplying any public hospital or charitable institutions or any public pumps baths and wash-houses that may be established for the use of the inhabitants and paid for out of any city town or borough rates; and such supply shall be provided in such quantities and upon such terms and conditions as may be agreed upon by the council of the city town or borough to which such water is supplied

> and the Board: Provided that no baths or wash-houses shall be entitled to be supplied with water under the provisions of this section unless the charges for the use thereof by the inhabitants shall be approved of and shall not exceed the amounts fixed by the Board.

In the County Court this defence was upheld; but, on appeal, the Full Court of the Supreme Court of Victoria reversed that judgment and held the defendants liable. The sole issue is whether or not "The Lost Dogs' Home," conducted by the defendants as trustees, is a "charitable institution" within Section 94.

This legislation, it was stated by counsel, was introduced in the Colony of Victoria in 1853 by the statute 16 V., Cap. 39, which referentially incorporated (amongst other sections) Section 37 of the Imperial statute known as "The Waterworks Clauses Act, 1847." The section of the Imperial statute contains no reference to "charities." By "The Municipal Institutions Act, 1863," Section 365, municipal councils were first empowered to appropriate public monies

> "for erecting, establishing, maintaining or otherwise aiding any hospital or other institution or society . . . for the relief of such poor persons as through age, sickness, infirmity or accident are unable to help themselves. . . ."

In 1865, the statute of 1853 was repealed and an Act was passed (The Public Works Statute, 1865) to amend and consolidate the laws relating to public works. This statute contains, as Section 216, provisions in all material respects identical with the provisions of Section 94, above quoted, and, in particular and for the first time, included in the subjects of exemption "any public hospital or charitable institutions." Some other modifications, not now material to be considered, were made in adapting the Imperial statute to the local conditions of the Colony.

The learned County Court Judge took the view that, when introducing the words "any public hospital or charitable institutions" into Section 216, the legislature had probably failed to notice "certain qualifying words contained in the rest of the section," and that, having regard to local conditions, if the words so introduced were to be given any substantial application they must be read as extending to hospitals and charitable institutions not maintained by, or subject to the control of, municipal authorities. Otherwise, he says:—

> "the amendment must be regarded as almost useless and very insignificant . . . because there is certainly not more than one hospital under the control of the municipality and, so far as counsel could inform me, not one single charitable institution, and this fine-sounding amendment would be a very feeble contribution in the aid of charity."

He accordingly read the words "established for the use of the inhabitants, etc.," as inapplicable to "any public hospital and charitable institutions." He proceeded:—

> "Apparently when the section was originally drafted the 'purposes' designated were all 'purposes' controlled by municipalities and when the

amendment was made no attention was paid as to the method to be adopted for regulating the charges to be made for supplying hospitals or charitable institutions. But supposing an omission has been made for regulating the costs and charges, I do not think it would be right to hold that the obligation of supplying water to hospitals was thereby completely defeated."

In the Full Court the view prevailed that the construction of the statute contended for by the plaintiff resulted from the decision of the High Court of Australia in *Swinburne* v. *Federal Commissioner of Taxation* ([1920] 27 C.L.R. 377). The later decision of this Board in *Chesterman* v. *Federal Commissioner of Taxation* ([1926] A.C. 128) was regarded as distinguishable from, and was treated as not having over-ruled, *Swinburne's* case, notwithstanding that in a later Australian case, *Young Men's Christian Association* v. *Commissioner of Taxation* ([1926] 37 C.L.R. 351), members of the High Court had expressed the view that it might be necessary to reconsider the decision in *Swinburne's* case in the light of the *Chesterman* judgment. In *Swinburne's* case the High Court indicated that in its opinion the meaning attributed in ordinary parlance in Australia to the words "public charitable institution," used in s. 18 (1) (*h*) (iii) of the Income Assessment Act. 1915, is :—

"an institution which — assuming its public character . . . 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 cognisance" (p. 384).

The judgment then proceeds to enumerate a number of instances in which by special interpretation clauses this popular meaning had been placed upon the word "charitable" as used in various statutes passed by the former colonial Legislatures of Australia, which, it says, confirm the view that that construction should prevail in regard to the section immediately under consideration. It concludes :—

"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 [*i.e.*, the narrower popular meaning] is its true one."

In *Chesterman's* case (*supra*), in delivering the judgment of this Board dealing with the meaning of the word "charitable" in s. 8, subs. 5 of the Australian Estate Duty Assessment Act, 1914–1916, after pointing out that the appellants contended that the word "charitable" bore its technical legal meaning as in the statute of Elizabeth, ([1891] A.C. at p. 583), the respondent on the contrary maintaining that it bore its

popular meaning, which involves the idea of assisting poverty or destitution, Lord Wrenbury said (at p. 131) :—

> " In approaching this question the starting-point is found in *Pemsel's* case ([1891] A.C. 531) in the House of Lords, and in Lord Macnaghten's words (*ibid.* 580) : ' In construing Acts of Parliament it is a general rule . . . that words must be taken in their legal sense unless the contrary intention appears.' "

Lord Wrenbury then proceeds to consider whether from the context an inference can properly be drawn that the word " charitable " is used in the Estate Duty Act in its popular and not in its technical legal meaning and, failing to find in the context any sufficient ground for giving to it the former rather than the latter meaning, the conclusion is reached that the technical legal meaning must prevail.

From this statement of the effect of the two judgments it is obvious that, although *Swinburne's* case is not expressly adverted to in the report of the *Chesterman* case, it must be regarded as having been over-ruled by that decision. Indeed, the principle of construction upon which the *Swinburne* case rests is directly opposed to that which forms the foundation of the judgment of this Board in *Chesterman's* case. Moreover, their Lordships would observe that it is always unsatisfactory and generally unsafe to seek the meaning of words used in an Act of Parliament in the definition clauses of other statutes dealing with matters more or less cognate, even when enacted by the same Legislature. *A fortiori* must it be so when resort is had, as in the *Swinburne* case, for this purpose to the enactments of other Legislatures.

" The Lost Dogs' Home " is admittedly a charitable institution in the technical legal sense (re *Douglas* (1887), 35 Ch. D. 472), and it follows that the conclusion reached in the Supreme Court of Victoria cannot be maintained upon the ground there assigned.

Approaching the construction of the Act now before them with the view that the words " charitable institutions " must be taken in their technical legal sense " unless a contrary intention appears," their Lordships now proceed to consider whether in the present instance the context excludes that meaning and requires that these words should be given a more restricted scope.

Envisaging Section 94 as a whole, its design would appear to be to provide for the furnishing of a sufficient supply of water, free of charge, for certain municipal purposes and to certain public institutions supported by, or at the cost of, the municipal authorities for the use of the inhabitants. The cleansing of sewers and drains and the cleansing and watering of streets (the first purposes specified) are undoubtedly works carried on by those authorities. The adjective " public " preceding the word " hospitals " would seem also to qualify the immediately succeeding words " charitable institutions " (these being the

second set of objects specified), just as the adjective "public" preceding the word "pumps" also qualifies "baths and wash-houses" (these three forming the last group of subjects of exemption). While it may be questionable whether the clause "that may be established for the use of the inhabitants and paid for out of any city, town or borough rates," grammatically applies only to "public pumps, baths and wash-houses" (the words which immediately precede it), or also extends to "public hospitals or charitable institutions," the repetition of the word "public" before "pumps, etc.," would seem to emphasize the municipal character of the undertakings to be benefited by the exemption. But whether the qualifying clause "that may be established, etc.," does or does not apply to all the preceding subjects of exemption, the application of the immediately succeeding clause "and *such* supply shall be provided, etc.," to every item of the supply dealt with in the section admits of no doubt. The reference by the word "such," preceding the word "supply," to the sufficient supply of water" mentioned in the first member of the section is clear. It is, therefore, certain that the entire supply of water dealt with in the section, and each item thereof, is required to be :—

> "provided in such quantities and upon such terms and conditions as may be agreed upon by the council of the city, town or borough to which such water is supplied and the Board."

This latter provision would seem to put beyond doubt the municipal character of all the works and institutions intended to be benefited. The agreement as to quantities, terms and conditions is to be made *by* the council of the municipality *to* which such water is supplied.

Their Lordships are unable to assent to the view of the learned County Court Judge that it may be assumed that the Legislature, when introducing, in 1865, into Section 216 of the Public Works Act, the words "any public hospitals or charitable institutions," had overlooked the qualifying words contained in that section, which restrict its application to municipal undertakings. There is nothing to warrant such an assumption. On the contrary, the Legislature must, in their Lordships' opinion, be taken not only to have been cognisant of the general character and scope of the section, but also to have been fully apprised of the presence in it, and of the significance, of the restrictive clauses now under discussion. That it was so is indicated by the verbal changes made in their phraseology.

In the opinion of their Lordships, therefore, the section as it stands discloses an intention on the part of the Legislature to restrict the exemption for which it provides to public institutions, *i.e.*, municipally owned or conducted institutions, to which class, admittedly, "The Lost Dogs' Home" does not belong.

So far as the history of the section may be looked at, it serves to confirm this view. The corresponding provision of the English Waterworks Clauses Act, 1847, made part of the

law of Victoria in 1853, was confined in its application to public works and institutions established "for the free use of the inhabitants" or paid for out of municipal rates. The provision did not then extend to public hospitals or charitable institutions, municipal authorities not having had, at that time, the right to establish, maintain or aid such institutions. That power was conferred by the legislation of 1863, already adverted to, and and shortly afterwards (1865)—not improbably with a view to further benefiting such hospitals or charitable institutions as any municipality to which the Melbourne and Metropolitan Waterworks Act, 1915, applies, might see fit to establish, maintain or aid under the legislation of 1863—the words "any public hospitals or charitable institutions" were inserted in re-enacting the section which already provided for the exemption from water rates of certain other municipal undertakings.

Their Lordships are, accordingly, of the opinion that for the reasons they have indicated the conclusion reached by the Supreme Court of Victoria was correct. They will, therefore, humbly advise His Majesty that this appeal should be dismissed with costs.

**In the Privy Council.**

---

LAURENCE ARTHUR ADAMSON AND OTHERS

*v.*

THE MELBOURNE AND METROPOLITAN BOARD OF WORKS.

---

DELIVERED BY CHIEF JUSTICE ANGLIN.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2

1928.