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IN THE PRIVY COUNCIL

No. 36 of 1953

ON APPEAL

FROM THE COURT OF APPEAL FOR THE WINDWARD ISLANDS
AND LEEWARD ISLANDS (ST. VINCENT CIRCUIT)

B E T W E E N

CLARICE HADAWAY Administratrix of the
Estate of William Horatio Clairmonte
(or Clairmont) Boardman deceased

Appellant

- and -

1. WILMOT HENRY HADAWAY and
2. THE ATTORNEY-GENERAL OF THE
WINDWARD ISLANDS

Respondents

38020

UNIVERSITY OF LONDON
V.L.S.I.
20 MAR 1955
INSTITUTE OF ADVANCED
LEGAL STUDIES

CASE FOR THE APPELLANT

RECORD

- p.50 1. This is an appeal against the order dated the 6th August 1952 of the Court of Appeal of the Windward Islands and Leeward Islands (St. Vincent Circuit) which reversed the Order dated the 9th October 1951 of Mr. Justice Donald Edward Jackson Chief Justice.
- p.21 2. The question at issue in this appeal is whether on the true construction of the Will dated the 28th November 1944 of the above mentioned Henry Langlie Wilmot Hayward (hereinafter called "the Testator") deceased the gift of the residuary estate of the Testator was a good charitable gift or was void.
- p.5. 3. The Testator's Will is set out on pages 5,6 and
1.28 7 of the Record. By clause 1 he appointed William Horatio Clairmonte (or Clairmont) Boardman (in the said Will and hereinafter called William Horatio Boardman) and the Respondent Wilmot Henry Hadaway to be his executors and trustees and (by clause 2) devised to his trustees all his real and personal estate upon administrative trusts (except certain freehold property specifically given) and (clause 4) upon trust as to his personal estate to set aside and invest in proper securities a sum sufficient to produce the annuity of £100. to be paid to the said William Horatio Boardman during his life with a proviso that his executors might in their
- p.5. 1.31

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discretion invest the sum to be set aside under that clause in the shares securities or stock of the Bank to be established in accordance with his directions thereafter contained.

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4. By clause 5 the Testator declared that his executors and trustees should hold the residue of his personal estate upon trust to pay and transfer the same to a body corporate established under the laws of St. Vincent for the purpose of establishing and founding a Bank, within two years of the grant of probate of his will on the terms directions and conditions thereafter set out.

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5. By clause 6 the Testator directed his trustees to use their best endeavours in incorporating by Statute a Body to manage and direct the said Bank, the Directors of which should be comprised of the Administrator, the Colonial Treasurer and four other persons to be appointed annually at the general meeting of the body corporate or if the vacancy necessitated it by the Executive Council of St. Vincent.

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6. By clause 7 the Testator empowered the said Directors to appoint or dismiss a Managing Director of the Bank who was to be subject to their control and direction.

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7. By clause 3 the Testator declared that the object of the Bank would be primarily to assist the Planters and Agriculturalists of St. Vincent by way of loans at a sufficiently low rate of interest as was compatible with the proper operation of the Bank.

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8. By clause 10 the Testator declared that his executors and trustees should be entitled to remuneration for any services rendered other than those imposed by the Will.

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9. The Testator died on the 2nd June 1946 without having altered or revoked the said Will except by a Codicil appointing a further executor (who in the event renounced probate) and his said Will and Codicil were duly proved by the said William Horatio Boardman on the 17th February 1947 and by the Respondent Wilmot Henry Hadaway on the 28th May 1947.

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10. The gross value of the Testator's personal estate was in the affidavit sworn for probate stated to be £114,000 odd and it was estimated that the net residue would amount to about £80,000.

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11. Pursuant to the directions contained in the said Will the executors presented bills to the Legislative Council and promoted an Ordinance which established

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a body corporate to be known as the Henry Hayward Agricultural Credit Bank.

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12. On the 16th May 1950 the said William Horatio Boardman and the Respondent Wilmot Henry Hadaway applied by Originating Summons to which the Attorney General of the Windward Islands was made Defendant, for the determination of the question whether the trust contained in clauses 5,6,7 and 8 of the said Will was a valid and effective public(or charitable) trust or was invalid and failed and if it was decided that the Testator died intestate whether the said William Horatio Boardman (or who else of the next of kin) was or were entitled to the residuary estate of the Testator.

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13. The summons was adjourned into Court and was heard on the 5th,6th and 9th July 1951 before the Chief Justice who by his judgment dated the 9th October 1951 found that the Will did not effectually create a charitable trust and by his Order of the same date he declared that the residuary estate was divisible among the next of kin(whoever they might be)of the Testator as on an intestacy.

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14. On the 23rd October 1951 the Attorney General of the Windward Islands gave notice of an appeal to the Court of Appeal and for an order that the Judgment of the Chief Justice might be reversed on the ground (among others) that the learned Judge was wrong in holding that the said Will did not create a valid charitable trust.

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15. On the 17th February 1952 William Horatio Boardman died before the appeal came on for hearing.

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16. The appeal was heard by the Court of Appeal on the 22nd, 23rd and 24th April 1952 and by their Order dated the 6th August 1952 the Judges of the Court of Appeal (Mr. Justice Cools-Lartigue and Mr. Justice Manning, Mr. Justice Date dissenting) reversed the decision of the Chief Justice and allowed the appeal.

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17. The learned Judges of both Courts reviewed the authorities relating to charitable gifts. The learned Chief Justice discussed the question whether loans to planters and agriculturists must necessarily be made for the purposes of agriculture; and found it difficult to take that view and said "The whole gift in clause 8 can be a good charitable one, only if the chief or dominant object is charitable and also if the objects or purposes implied are ancillary to the dominant

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object and not entirely independent of it. He said further "Nowhere in clause 8 or elsewhere in the Will is it stated directly or indirectly what purposes other than to assist planters and agriculturists are to be carried out by the bank, although it is manifest that there are other purposes to which the trust may also be applied; I look in vain throughout the Will for language which may be understood as indicating that the primary object is for a charitable purpose, or for words employed in a way that a conclusion may be justly reached as to whether the implied purposes are ancillary or independent, whether they are for charitable or non-charitable purposes." He concludes "In the present case the trustees are left at large in the selection of the objects to be benefited other than that designated 'primarily'; this appears fatal to the cause of the Respondent." He further cited a passage from the judgment of Lord Greene M.R. in Re Osmund (1944 Ch.206) to the effect that it was sufficient to destroy the charitable nature of the gift if on its true construction it was possible for those administering the property to go outside the scope of charity. The learned Chief Justice found that the trust in the Will of the Testator offended against this principle and accordingly that as a charitable trust it was ineffectually created and was invalid.

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18. Mr. Justice Cools-Lartigue referred to the principle which he found stated by Lord Chelmsford in Bruce- v- Presbytery of Deer L.R.1 H.L.(Sc) at p. 97 and by Lord Hanworth M.R. in In Re Bain 1930 1 Ch. 224 that where possible the Court should uphold a charitable gift and he also referred to Re White 1893 2 Ch.41,52 and said "With that case in mind and the cardinal rule of construction enunciated above that where possible the Court should uphold the gift, I have come to the conclusion that on a true construction of the terms of the Will it was the intention of the Testator that these loans are to be made to planters and agriculturalists at a low rate of interest in their character as such and therefore for agricultural purposes and no other. Had that not been his intention it appears to me that he would not have specifically singled out planters and agriculturalists in his will. Having regard to the above finding I have no hesitation in holding that in a community like that of St. Vincent, whose very life-blood is agriculture, the formation of a Bank, the primary object of which is the making of loans to planters and agriculturalists for agricultural purposes at a low rate of interest, is a project for the benefit of the community." He then discussed further cases and said "It must not be forgotten that the Testator has directed that a Bank be established the primary object of which is to assist planters and agricultur-

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alists by lending them money at a low rate of interest. It therefore logically follows that the activities of this Bank cannot go outside ordinary banking business, all of which have one object in view, namely:- the making of profits. It also follows that these profits can only ultimately be utilized for one object, i.e. the assistance of planters and agriculturalists in the manner set out by the Testator, or, in other words, for the dominant or primary purpose of the trust. It therefore appears to follow, that any activity undertaken by the Bank other than the assistance of planters and agriculturalists must be ancillary or subservient to the primary or dominant object of the trust."

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19. The following passages in the judgment of Mr. Justice Manning explain the view which he took. "The view I take is as follows: The dominant object of the Bank was "to assist the planters and agriculturalists of St. Vincent by way of loans at a sufficiently low rate of interest as is compatible with the proper operation of the Bank". The use of the word "primarily" indicates this. The Bank may engage in other business; but any profits derived from this go to increase the amount of capital available for loans to planters and agriculturalists; and will also render possible a still further reduced rate of interest for these persons. This other business is therefore ancillary in the strict sense; it helps the dominant object." He concluded "It will be seen that I agree with the learned Chief Justice on the construction of clause 8. I agree that loans may be made to planters and agriculturalists for purposes that are not agricultural. I agree that apart from such loans the business of the Bank may include transactions that are not for the promotion of agriculture. Where I differ is firstly in my conclusion that the Testator intended that these classes of persons should be assisted, when they needed assistance, and that such assistance will help to promote agriculture, even if the assistance is not required for agricultural purposes. Secondly, I had no difficulty in reaching the conclusion that this assistance for the promotion of agriculture was the dominant intention; and that all other activities of the bank, though not connected with the promotion of agriculture, were intended to help the dominant intention."

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20. Mr. Justice Date in his judgment said of clause 8 of the Will "To my mind the main difficulty in the case lies in deciding whether clause 8 of the Will, read in its natural and grammatical sense can fairly be said to be capable of the construction that all loans granted to the planters and agriculturalists at low rates of interest (the Testator's bounty) must be applied (directly or indirectly) towards the promotion of agriculture. In order to qualify as a

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charitable trust it is, as I understand the law, not enough that the loans may be applied towards that purpose; if the words of the Will are not capable of meaning that the loans must be used for that purpose and that purpose only". He then discussed the authorities and in the light of them he was forced to the conclusion that the bequest was not beneficial to the community in a sense which the law recognised as charitable and was therefore invalid. He concludes "It is thus unnecessary for me to go on to deal with the numerous arguments advanced regarding the word "primarily" in clause 8 of the Will. I will content myself with simply stating that in that respect I am in general accord with the views of the learned President of this Court.

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21. Leave to appeal to Her Majesty in Council was granted to the Respondent Wilmot Henry Hadaway but he did not comply with the conditions thereof.

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22. The Appellant, as the administratrix of the estate of the said William Horatio Boardman, applied to be added a party to the proceedings and was so added by Order of the Court of Appeal dated the 8th July 1953 as Appellant instead of the said Wilmot Henry Hadaway and it was ordered that all further proceedings in the appeal be carried on by the Appellant as such administratrix as Appellant and the said Wilmot Henry Hadaway and the Attorney General for the Windward Islands as Respondents. The Court of Appeal by the same Order refused the application of the Appellant for leave to appeal to Her Majesty in Council. By Order in Council dated the 1st August 1953 she was given special leave to appeal. The Appellant humbly prays that her appeal may be allowed with costs, that the Order of the Court of Appeal may be reversed and the Order of the Chief Justice restored for among other the following:-

R E A S O N S

1. A bequest upon trust to pay and transfer property to a body to be established for the purpose of establishing and founding a Bank is not a bequest for a charitable purpose.
2. The Bank when founded would carry on the business of banking for the purpose of making profits for its shareholders and that is not a charitable object.
3. The assistance of planters and agriculturalists is not necessarily for the advancement of agriculture and is not a charitable purpose.
4. In any case the assistance of planters and agriculturalists by way of loans was only one of the

objects of the Bank.

5. The opinion of Mr. Justice Cools-Lartigue that the profits made by the Bank could only ultimately be used for the assistance of planters and agriculturalists and the opinion of Mr. Justice Manning that any profits derived from the business of the Bank would go to increase the amount of capital available for loans to planters and agriculturalists are not justified by any language used in the Will of the Testator.

6. There is nothing in the Will to show that the residuary estate was to be invested in shares in the Bank.

7. It would be necessary or, if not necessary, it would be possible for money to be raised by the Bank by the issue of shares in order to carry on the business of the Bank and the profits thereof would go to the shareholders.

8. The Testator contemplated that shareholders in the Bank would earn profits because he authorised his executors to invest the sum directed to be invested by clause 4 in shares in the Bank to be established.

9. The property was not by the Will vested in any charitable class exclusively and the disposition fails for uncertainty.

10. The trust imposed by the Will is not one which the court could control: and does not therefore satisfy the crucial test which it must satisfy to be charitable.

11. The Order of the Chief Justice was right for the reasons therefor given in his judgment and ought to be restored.

LINDSAY M. JOPLING

No.36 of 1953

IN THE PRIVY COUNCIL

ON APPEAL FROM THE COURT OF APPEAL

FOR THE WINDWARD ISLANDS AND

LEEWARD ISLANDS (ST. VINCENT

CIRCUIT)

BETWEEN:

CLARICE HADAWAY Appellant

-and -

W.H.HADAWAY and
Another Respondents

CASE FOR THE APPELLANT

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