

45, 1955

UNIVERSITY OF THE WEST INDIES  
W.C.I.  
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INSTITUTE OF ADVANCED LEGAL STUDIES

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)

44807

45, 1955

BETWEEN

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.*

CASE

Of the Respondent THE ATTORNEY-GENERAL OF THE WINDWARD ISLANDS.

1.—This is an Appeal from the Judgment dated 6th August, 1952, of the Court of Appeal for the Windward Islands and Leeward Islands (Cools-Lartigue and Manning JJ., Date J. dissenting) reversing a Judgment dated 9th October, 1951, of Jackson C.J., whereby it had been declared that upon the true construction of the Will of one Henry Langlie Wilmot Hayward (hereinafter called "the Testator") a certain disposition therein contained was not a good charitable gift and failed for indefiniteness.

RECORD  
Order of C.A.  
6 Aug. 1952 :  
p. 50  
Order of  
Jackson, C.J.  
9 Oct. 1951 :  
p. 21

2.—The Testator by his last Will dated 28th November, 1944, appointed  
10 William Horatio Boardman and Wilmot Henry Hadaway (hereinafter  
together called "the Testator's Executors") Executors and Trustees

Will, 28 Nov.  
1944 : p. 5

pp. 6-7

thereof and devised and bequeathed all his property to them upon trust for conversion and after payment of his funeral and testamentary expenses to hold the same upon trust (subject as to certain parts thereof to life interests not material for present purposes) upon trusts set forth in Clauses 5 to 8 thereof (inclusive) for establishing a Bank the primary object of which (as stated in Clause 8 thereof) should be to assist planters and agriculturalists of St. Vincent by way of loans, at a sufficiently low rate of interest compatible with the proper operation of the Bank.

Codicil, 4 Dec.  
1944: p. 7

3.—By a Codicil dated 4th December, 1944, the Testator appointed Sydney Ogilvy Dasent to be an additional Executor and Trustee of his said Will, and on 2nd June, 1946, the Testator died without having otherwise varied his said Will. 10

Probate: p. 9

p. 10

4.—The said Will and Codicil were proved in the St. Vincent registry of the Supreme Court of the Windward Islands and Leeward Islands by the said William Horatio Boardman on 17th February, 1947, and by the said Wilmot Henry Hadaway on 28th May, 1947, the said Sydney Ogilvy Dasent having renounced Probate thereof.

Executors'  
Affidavit,  
para. 5: p. 4

5.—The said William Horatio Boardman was a half brother of the Testator and his sole heir and next of kin at his death and so became entitled to any property as to which he died intestate. 20

Executors'  
Affidavit,  
para. 6: p. 4

6.—The Testator's Executors have estimated that the net residuary estate of the Testator will amount to approximately £80,000.

Executors'  
Affidavit,  
para. 8: p. 4

7.—With a view to carrying the trusts of the said Will into effect the Testator's Executors have procured the enactment of an Ordinance intituled "An Ordinance to create a body corporate to be known as the Henry Hayward Agricultural Credit Bank and providing for the management thereof" whereby a Bank was incorporated.

Originating  
Summons, 16 May  
1950: p. 1

8.—By an Originating Summons dated 16th May, 1950, and issued in the said Supreme Court, in which the Testator's Executors were Plaintiffs and this Respondent, the Attorney-General of the Windward Islands, was sole Defendant, the Testator's Executors asked to have it determined whether on the true construction of the said Will the trust contained in Clauses 5 to 8 thereof is a valid and effectual public or charitable trust or failed for uncertainty or otherwise and for certain consequential relief. The said Originating Summons was supported by an Affidavit sworn by the Testator's Executors. 30

Executors'  
Affidavit, p. 3

9.—The said Originating Summons came on for hearing before the Chief Justice of the said Supreme Court (Jackson, C.J.) on 5th, 6th and

- 9th July, 1951, who delivered Judgment on 9th October, 1951. The learned Chief Justice referred in the course of his Judgment to the following cases: *Verge v. Somerville* 1924 A.C. at p. 499; *Oppenheim v. Tobacco Securities Trust Ltd.* 1951 A.C. 297; *Income Tax Commissioners v. Pemsel* 1891 A.C. at p. 583; *Williams Trustees v. Inland Revenue Commission* 1947 A.C. at p. 455; *re Macduff* 1896 2 Ch. 466; *Inland Revenue Commissioners v. Yorkshire Agricultural Society* 1928 1 K.B. at p. 637; *Morice v. Bishop of Durham* 10 V. at p. 537; *Keren Kayemeth Le Jisooel Ltd. v. Inland Revenue Commissioners* 1932 A.C. 650; *Oxford Group v. Inland Revenue Commissioners* 1949 2 All E.R. at p. 548; *re Bain* 1930 1 Ch. 224 and *re Osmund* 1944 1 All E.R. 262. The learned Judge after holding that the reference in the said Will to "planters and agriculturalists" indicated an intention to benefit both planters and agriculturalists and not only planters who are also agriculturalists, and after saying that it could hardly be doubted that a trust for the assistance of planters and agriculturalists of St. Vincent might be beneficial to the farming community of St. Vincent, remarked that he found it difficult to take the view that, because a legacy is left for the purpose of assisting planters and agriculturalists by loans, this fact compels the use of the loans, or reasonably implies that they must be used, for agricultural purposes or for the promotion of agriculture, still less for the relief of poverty. He went on to say that although, as he held, "primarily" in Clause 8 of the Will means "chiefly" and that planters and agriculturalists must be assisted, the Bank might have other purposes or objects and that the Bank is not precluded from extending its operations to objects or purposes which are not charitable. The learned Judge then held that the primary object of the Bank is not charitable. Observing that no where in Clause 8 or elsewhere in the Will is it stated directly or indirectly what purposes other than to assist planters and agriculturalists are to be carried out by the Bank, although (as he said) it is manifest that there are other purposes to which the trust may also be applied, he said that he looked in vain for any indication that the primary object is for a charitable purpose or as to whether the implied purposes are ancillary or independent. Finally he concluded that the Trustees are left at large in the selection of the objects to be benefited other than that designated primarily, which (he said) appears to be fatal, since (as he held) the trust offends against the rule that where the subject matter of a gift can be applied to non-charitable purposes, such gift is not charitable although the greater part of its purposes may be truly charitable. The learned Judge consequently declared the trust to be invalid and that the Testator had died intestate as to his residuary estate.

10.—This Respondent appealed from the said Judgment to the Court of Appeal of the Windward Islands and Leeward Islands (Cools-Lartigue, Date and Manning, J.J.), by whom the said Appeal was heard on 6th August, 1952. The Court by a majority (Cools-Lartigue and Manning J.J.) allowed the Appeal. The following additional authorities were cited in the

Notice of Appeal,  
23 Oct. 1951:  
p. 23

## RECORD

p. 30, l. 2 ; p. 31,  
l. 38 ; p. 40, ll. 6,  
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p. 33, l. 41 ; p. 39,  
l. 2

p. 49, l. 4

p. 49, l. 46

Order of Court of  
Appeal, 6 Aug.  
1952 : p. 50

Judgments of the majority : *Attorney-General v. National Provincial Bank* 1924 A.C. 265 ; *Bruce v. Presbytery of Deer* L.R.1 H.L. 180 at 97 ; *re Davis* 48 T.L.R. 539 ; and *re White* 1893 2 Ch. 41, 52. The majority of the Court of Appeal held that the trust in question was intended to benefit, and would benefit, agriculture. They also held that any profit declared by the Bank by any business other than loans to persons engaged in agriculture could only ultimately be used for the dominant or primary purpose of assisting agriculture, and that consequently any activities of the Bank other than the assistance of planters and agriculturalists must be ancillary or subservient to that primary or dominant object. The majority accordingly held the trust to be charitable. Date, J. in his dissenting Judgment, said that if the Testator intended the loans to be expended on the promotion of agriculture, he has failed to use words which adequately conveyed that intention and that the trust is not beneficial to the community in a sense which the law recognises as charitable and is therefore invalid. The Court of Appeal therefore reversed the Judgment of the Chief Justice and allowed the Appeal. 10

11.—Before the said Appeal came on for hearing the said William Horatio Boardman died, having by his last Will dated 16th May, 1950, appointed Barclays Bank (Dominion Colonial and Overseas) to be Executor and Trustee thereof. Barclays Bank (Dominion Colonial and Overseas) having renounced Probate, Administration of the Estate of the said William Horatio Boardman with his said Will annexed was granted on 2nd May, 1952, in the said Supreme Court to the Appellant Clarice Hadaway as Attorney for Enid Kohout, Franz Kohout and William Kohout three of the devisees and legatees of the Estate of the said William Horatio Boardman under his said Will. 20

Order in Council  
granting leave to  
Appeal : p. 55

12.—By an Order in Council dated 1st August, 1953, and made upon consideration of a report of the Judicial Committee of Her Majesty's Privy Council on a Petition of the Appellant that in the opinion of the said Committee leave ought to be granted to the Appellant to Appeal against the said Order of the said Court of Appeal Her Majesty was pleased to order accordingly. 30

13.—This Respondent submits and will contend that the trusts relating to the establishment of the said Bank contained in the Testator's said Will are valid charitable trusts and that the said Order of the Court of Appeal ought to be affirmed for the following among other

## REASONS

1. BECAUSE the establishment of the said Bank in accordance with the provisions of the said Will will tend to promote the industry of agriculture in the colony of St. Vincent. 40

2. BECAUSE the promotion of agriculture in the said colony is a public purpose within the intendment of the Preamble to the Statute of Elizabeth 43 Elizabeth I c. 4.
3. BECAUSE the primary purpose of the said Bank as is expressed in Clause 8 of the said Will is to assist financially planters and agriculturalists who are in need of such assistance.
4. BECAUSE the primary purpose of the said Bank expressed in Clause 8 of the said Will is a legally charitable purpose.
- 10 5. BECAUSE if and so far as the said Bank established in accordance with the said provisions might have purposes other than the said primary purpose, such other purposes would necessarily be ancillary or subservient to the said primary purpose.
6. BECAUSE all profits, if any, earned by the said Bank would be applicable solely for advancing the purposes for which the said Bank was established, and ultimately the said primary purpose.
- 20 7. BECAUSE the Judgments of the majority of the said Court of Appeal were right and ought to be affirmed.
8. BECAUSE the Judgments of the learned Chief Justice and of Date, J. were wrong in law.

DENYS B. BUCKLEY.

In the Privy Council.

No. 36 of 1953.

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

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BETWEEN

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  
*Respondent*

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CASE

for the Second Respondent  
THE ATTORNEY-GENERAL OF THE  
WINDWARD ISLANDS.

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BURCHELLS,  
68 Victoria Street,  
Westminster, S.W.1,  
*Solicitors for the 2nd Respondent.*