

**Clarice Hadaway, Administratrix of the Estate of William
Horatio Clairmonte (or Clairmont) Boardman (deceased)** - - *Appellant*

v.

Wilmot Henry Hadaway and another - - - - *Respondents*

FROM

**THE COURT OF APPEAL FOR THE WINDWARD ISLANDS
AND LEEWARD ISLANDS**

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 13TH DECEMBER, 1954**

Present at the Hearing:

VISCOUNT SIMONDS

LORD MORTON OF HENRYTON

LORD SOMERVELL OF HARROW

[*Delivered by* VISCOUNT SIMONDS]

In this appeal, which is brought from a judgment of the Court of Appeal for the Windward Islands and Leeward Islands reversing a judgment of the learned Chief Justice (Jackson, C.J.), no general question of law arises but the issue depends on the construction of the will dated the 28th November, 1944, of one Henry Langlie Wilmot Hayward who died on the 2nd June, 1946.

By his will the testator, after appointing William Horatio Boardman and Wilmot Henry Hadaway to be his executors and trustees, devised and bequeathed to them all his property upon trust for conversion and payment of his funeral and testamentary expenses to hold (subject as to some parts thereof to certain life interests) upon the trusts set forth in paragraphs 4 to 8 thereof which it is convenient to set out in full.

4. Upon trust as to my personal estate to set aside and invest in proper securities a sum sufficient to produce an annuity to be paid as follows:—

To William Horatio Boardman the sum of £100 per annum payable in equal monthly instalments for the term of his natural life.

Provided nevertheless that my Executors may in their discretion invest the sum to be set aside under this paragraph in the shares, securities or stock of the Bank to be established in accordance with my direction hereinafter contained.

5. Upon trust as to the residue of my personal estate to pay and transfer the same to a body corporate established under the Laws of Saint Vincent for the purpose of establishing and founding a Bank within two years of the grant of the probate of this my will on the terms, directions and conditions hereinafter set out.

6. I hereby direct my Trustees to use their best endeavours in incorporating by Statute a Body to manage and direct the said Bank, the Directors of which shall be composed of the Administrator, the Colonial Treasurer and four other persons to be appointed annually at the general meeting of the body corporate or if any vacancy necessitates it by the Executive Council of Saint Vincent.

7. I hereby empower the said Directors to appoint or dismiss a Managing Director of the Bank, who is to be subject to their control and discretion.

8. I hereby declare that the object of the Bank will be primarily to assist the Planters and Agriculturalists of Saint Vincent by way of loans at a sufficiently low rate of interest as is compatible with the proper operation of the Bank.

The will was in due course proved by the executors named therein, of whom William Horatio Boardman was stated to be the sole heir and next of kin of the testator. The residuary estate amounted to about £80,000.

In these circumstances an originating summons was issued in the Supreme Court of the Windward Islands and Leeward Islands, in which the testator's executors were plaintiffs and the respondent the Attorney-General of the Windward Islands was defendant, to have it determined whether the trust contained in clauses 5 to 8 of the will was a valid and effectual public or charitable trust or failed for uncertainty or any other reason and for certain consequential relief.

This summons coming on for hearing before the Chief Justice of the Supreme Court, that learned judge, in a long and careful judgment, in the course of which he recited many of the leading authorities in this branch of the law, concluded that the will did not effectually create a charitable trust and declared that the testator's residuary estate was divisible among the next of kin of the testator as upon an intestacy.

From this judgment the respondent Attorney-General appealed to the Court of Appeal and that Court by a majority (Cools-Lartigue and Manning, J.J., dissentiente Date, J.), allowed the appeal. The majority of the Court in effect held that the trust in question was intended to benefit, and would benefit, agriculture, and further that any profit made by the Bank by any business other than loans to persons engaged in agriculture could only ultimately be used for the dominant and primary purpose of assisting agriculture and that consequently any activities of the Bank other than the assistance of planters and agriculturists must be ancillary or subservient to that primary or dominant object. Therefore, they held, the trust was charitable. In his dissenting judgment, on the other hand, Date, J., took the view that, if the testator intended the loans to be expended on the promotion of agriculture, he had failed to use words which adequately conveyed that intention and that the trust was not beneficial to the community in a sense which the law recognised as charitable and was therefore invalid.

In the meantime William Horatio Boardman died and the appellant Clarice became his representative by virtue of a grant of administration of his estate with the will annexed made on the 2nd May, 1952. She has by special leave appealed from the order of the Court of Appeal, the respondents being the surviving executor, Wilmot Henry Hadaway, and the Attorney-General of the Windward Islands.

At the hearing before their Lordships, much argument was directed to the nature of the machinery by which the trust declared by paragraph 8 of the will was to be brought into existence, and it may be conceded that in this respect the testator's intentions are not very clearly expressed. But it does not appear to their Lordships that there is any materiality in the argument, for ultimately the only question is whether the trust set out in paragraph 8 is a valid trust and upon this question they are of opinion that the judgments of the Chief Justice and Date, J. are correct. It appears to them to be impossible to regard as charitable a trust for the granting of loans at a low rate of interest to a class of persons carrying on a particular trade or business or profession, unless at least there is a condition that loans so made should be employed for a purpose which could itself be regarded as charitable. Their Lordships do not wish to cast

any doubt upon the correctness of the decision in *Commissioner of Inland Revenue v. Yorkshire Agricultural Society* [1928] 1 K.B. 611, at p. 636, "It is plain to my mind", said Lawrence, L.J., in that case, "that the general improvement of agriculture is a charitable purpose falling within the fourth class of Lord Macnaghten's well-known classification of legal charities in *Pemsel's case*". Their Lordships accept this as an accurate statement of the law, but it appears to them impossible to regard the will of the testator as creating a trust for the general improvement of agriculture only or for such a purpose and purely ancillary purposes only. But it is conceded by the appellant that, unless the will can be thus construed, the appeal must fail: for if the trust fund may be devoted either to charitable or to non-charitable purposes the gift is invalid. This is the question of construction upon which, as has already been said, apart from any other difficulties, the issue in this case turns. Their Lordships do not dissent from the general proposition, which has been stated in various terms, to the effect that, where possible, a benignant construction in favour of charity should be adopted. But this does not justify the insertion of words in order to restrict the plain meaning of an expression and thus give validity to an otherwise invalid bequest. If there is a real ambiguity, it may be resolved in favour of charity: where there is no ambiguity, no question arises: the plain meaning of the words must be accepted and so must the ensuing legal effect.

In the present case their Lordships entertain no doubt that the ambit of the trust is wide enough to include loans which could not fairly be described as being for the promotion of agriculture or as being ancillary to that purpose, and that it is only by inserting restrictive words that loans could be so confined. For it is clear that it would be competent for the directors of the Bank, which is to be established under the will, to make loans to planters in any financial emergency whether due to crop failure or other farming disaster or to some personal distress. But such loans which might or might not be used for agricultural purposes cannot be properly described as made for the general promotion of agriculture however much individual planters may benefit. The promotion of agriculture is a charitable purpose, because through it there is a benefit, direct or indirect, to the community at large: between a loan to an individual planter and any benefit to the community the gulf is too wide. If there is through it any indirect benefit to the community, it is too speculative and remote to justify the attribution to it of a charitable purpose. It would be equally easy and equally wrong to regard as charitable a trust for the granting of loans on generous terms to any member of any other class which performs a useful function in the social or economic life of the country. If their Lordships had come to a different conclusion on this point, the respondent had other difficulties to meet. It is however sufficient to say that their Lordships, being of opinion that upon a proper construction of the will restrictive words cannot be imported into the terms of the trust and that without them the trust is invalid, will humbly advise Her Majesty that this appeal should be allowed, the order of the Court of Appeal except so far as it relates to costs set aside, and the Order dated the 9th October, 1951, of the Chief Justice restored.

In the special circumstances of this case their Lordships think it right to direct that the costs of all parties of this appeal should be paid as between solicitor and client out of the testator's estate.

In the Privy Council

CLARICE HADAWAY, Administratrix of the
Estate of WILLIAM HORATIO CLAIRMONTE
(or CLAIRMONT) BOARDMAN, deceased

v.

WILMOT HENRY HADAWAY
AND ANOTHER

DELIVERED BY VISCOUNT SIMONDS