

THE CORPORATION OF THE CITY }
OF HAMILTON

APPELLANT;

1954
*Mar. 25

AND

THE CHILDREN'S AID SOCIETY }
OF THE CITY OF HAMILTON

RESPONDENT.

*Oct. 5

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Infants—Neglected Children—Municipal Liability for upkeep where before permanent custody granted Children's Aid Society, child attains age of 16 years—The Children's Protection Act, R.S.O. 1950, c. 53—The Interpretation Act, R.S.O. 1950, c. 184, ss. 1 and 2.

In proceedings taken under *The Children's Protection Act*, R.S.O. 1950, c. 53, a boy born Dec. 22, 1936 was by a judge's order made on Nov. 8, 1951, committed to the temporary custody of the respondent for three months. On Feb. 13, 1952 the judge having found the boy to be a "neglected child" within the meaning of the Act and a resident of the appellant municipality and the latter liable for

1954
 CITY OF
 HAMILTON
 v.
 HAMILTON
 CHILDREN'S
 AID SOCIETY

maintenance, renewed the temporary wardship for twelve months. On Feb. 11, 1953, the case was again brought before the judge who adjourned the hearing to Feb. 25 on which date he made an order wherein he again found that the boy was a neglected child, ordered that he be permanently committed to the custody of the respondent and that the appellant pay for his maintenance. The appellant appealed on the ground that under s. 1 (c) of the Act a "child" means a boy or girl who actually or apparently is under the age of 16 years of age" and since the child had attained that age, such last mentioned order was made without jurisdiction.

Held: That the order was made in proceedings commenced in 1951 when the boy was under 16 years of age and was, as was the order of Feb. 13, 1952, a continuation of the original proceedings. The definition of "child" contained in s. 1 (c) of the Act read in the light of ss. 1 and 2 of *The Interpretation Act*, R.S.O. 1950, c. 184, would make it inconsistent with the intent and object of the former to hold that the judge did not have jurisdiction to make the order. In *Re Van Allen* [1953] O.R. 569 approved.

Decision of the Ontario Court of Appeal [1953] O.W.N. 699, affirmed.

APPEAL from an order of the Court of Appeal of Ontario (1) dismissing the appellant's motion to set aside an order of Burbidge J., Judge of the Family Court of the City of Hamilton and County of Wentworth.

J. T. Weir, Q.C. for the appellant.

Brendan O'Brien, Q.C. for the respondent.

The judgment of the Chief Justice and of Taschereau, Estey and Locke JJ. was delivered by:—

The CHIEF JUSTICE:—The question in this appeal is whether the appellant, the Corporation of the City of Hamilton, must pay the respondent, the Children's Aid Society of the City of Hamilton, the sum of \$1.65 per day for the maintenance of a boy, directed to be paid by an order, dated February 25, 1953, of the Judge of the Juvenile and Family Courts of the City of Hamilton and the County of Wentworth. This order was made under the provisions of *The Children's Protection Act*, R.S.O. 1950, c. 53, s. 1 (c) of which enacts:—

1. In this Act,

(c) "child" means a boy or girl actually or apparently under 16 years of age;

The boy was born December 22, 1936, and, therefore, on February 25, 1953, was not "under 16 years of age", and the appellant contends that there was no jurisdiction in

the judge to direct it to pay. If it is right, the Society also loses its right of permanent custody and control which was given by the same order.

While it does not appear in the printed case, apparently an order was made under the Act by the judge on November 8, 1951, temporarily committing him to the care and custody of the Society for three months. Pursuant to s-s. 9 of s. 7, he was brought before the judge on February 13, 1952, for further and other consideration and action whereupon, by order, the judge found him to be a neglected child within the meaning of the Act. By the same order the child was temporarily committed to the care and custody of the Society for a period of twelve months, commencing on that date; he was found to be a resident of the City, which was declared to be liable for his maintenance and ordered to pay the sum of \$1.35 a day therefore. At this time the boy was still under 16 years of age.

In accordance with the same subsection, the Society applied to the judge, on February 11, 1953, for an order committing the child temporarily or permanently to the care and custody of the Society and ordering the City to pay for his maintenance. On that date the judge made an order, which, following a printed form, stated "This case was again brought before the judge for further consideration and action pending the hearing or determination as to whether or not the child" was a neglected child, and ordered that he be placed in the temporary custody and care of the Society and directed the City to pay \$1.65 a day for the child's maintenance. It is apparent that the child having been declared to be a neglected child the previous year, that part of the printed form italicized should have been stricken out; but that cannot have any effect upon the prior determination.

On February 25, 1953, the order in question was made, again following a printed form. It states that the judge finds the child to be a neglected child but it may be pointed out again that the same finding had been made on February 13, 1952. By it the judge also permanently commits the boy to the care and custody of the Society and orders the City to pay \$1.65 a day maintenance. This

1954
 CITY OF
 HAMILTON
 v.
 HAMILTON
 CHILDREN'S
 AID SOCIETY
 Kerwin C.J.

1954
 CITY OF
 HAMILTON
 v.
 HAMILTON
 CHILDREN'S
 AID SOCIETY
 Kerwin C.J.

order was affirmed by the Court of Appeal for Ontario and by leave of that Court is now before us for consideration.

The scheme of the Act is that by s-s. 1 of s. 7 an authorized person may apprehend any apparently "neglected child", which has been previously defined by s. 1 (*j*). It was in pursuance of s-s. 2 of s. 7 that the boy was brought before the judge for examination and thereupon, according to the subsection, "the judge shall investigate the facts of the case and ascertain whether the child is a neglected child and his age, and the name, residence and religion of his parents." Subsection 7 provides:—

(7) Pending the hearing or determination of any such case the judge may make such order for the temporary custody and care of the child as he may deem proper.

and it was under that provision that the order of November 8, 1951, was made. Subsection 9 enacts in part:—

where a child has been temporarily committed to the care and custody of the society, the society may at any time during the period of temporary commitment bring the case again before the judge for further and other consideration and action under this section, and if the temporary commitment has not been earlier terminated, the case shall, at the expiration of the specified period, again come before the judge and the judge shall thereupon further inquire and determine whether the circumstances justify an order returning the child to the parent or guardian or making a further order under subsection 8.

The relevant part of s-s. 8, referred to above, enacts:—

(8) If the judge finds the child to be a neglected child he may make an order,

* * *

(b) that the child be temporarily committed to the care and custody of the children's aid society for such specified period as in the circumstances of the case he may deem necessary, provided that such period shall not exceed 12 months; or

(c) that the child be committed permanently to the care and custody of the children's aid society.

It was under this subsection, on February 13, 1952 (when the boy was still under 16 years of age), that the judge found him to be a neglected child, committed him temporarily to the care and custody of the Society, found him to be a resident of the City of Hamilton, and ordered it to pay the Society \$1.35 per day for his maintenance. Subsection 11 of s. 7 provides:—

(11) The inquiry may be made at the hearing directed under subsection 2 or at any subsequent time as the judge may determine.

February 13, 1952, was a "subsequent time"; as was also February 11, 1953, and February 25, 1953. The order for maintenance made by the judge is authorized by s. 10. Under s. 13, the society thereupon became the legal guardian of the child until he attained the age of twenty-one years or was adopted.

1954
 CITY OF
 HAMILTON
 v.
 HAMILTON
 CHILDREN'S
 AID SOCIETY
 —
 Kerwin C.J.
 —

The order in appeal was thus made in proceedings that had commenced in 1951 when the boy was under 16 years of age, and the order of February 13, 1952, was also made when he was under that age. These orders having been so made, I agree with the Court of Appeal that the proceedings on February 11 and 25, 1953, were a continuation of the original proceedings. Section 1 (c) defining "child" must be read in the light of ss. 1 and 2 of the Ontario Interpretation Act, R.S.O. 1950, c. 184:—

1. The provisions of this Act shall apply to every Act of the Legislature contained in these Revised Statutes or hereafter passed, except in so far as any such provision,

- (a) is inconsistent with the intent or object of the Act; or
- (b) would give to any word, expression or clause of the Act an interpretation inconsistent with the context; or
- (c) is in the Act declared not applicable thereto.

2. Where an Act contains an interpretation section or provision, it shall be read and construed as subject to the exceptions contained in section 1.

Reading the definition of "child" in accordance with these directions, it would be inconsistent with the intent or object of the Children's Protection Act to hold that under the present circumstances the judge did not have jurisdiction to order the City to pay the \$1.65 per day for the boy's maintenance. This is the same conclusion to which the Court of Appeal had previously arrived in *Re Van Allan* (1), where the same point had arisen.

The appeal should be dismissed with costs.

CARTWRIGHT J.:—The question raised on this appeal is stated in the reasons of my Lord the Chief Justice.

It appears from the evidence of Mr. Judd that on November 14, 1951, Charles William Harris, hereinafter referred to as "the child", and his two sisters were made temporary wards of the respondent for a period of three months. On February 13, 1952, this temporary wardship

(1) [1953] O.R. 569.

1954
 CITY OF
 HAMILTON
 v.
 HAMILTON
 CHILDREN'S
 AID SOCIETY
 ———
 Cartwright J.
 ———

was by order of His Honour Judge Burbidge continued for a period of twelve months commencing on the date of the order. On December 22, 1952, the child attained 16 years of age. On February 11, 1953, the case was again brought before the same learned judge. Counsel for both parties to this appeal were present. Counsel for the respondent requested an adjournment of the hearing to February 25, 1953, and added:—"As the existing order expires the day after to-morrow we are asking for an interim order." Counsel for the appellant is not reported as having said anything. The adjournment was granted and an interim order signed. In reproducing this interim order in the printed case there has been an error in punctuation. The original order so far as relevant reads as follows:—

Date of order—February 11, 1953.

On the 11th day of February, 1953, Pursuant to Sub-section 9, Section 7, this case was again brought before the Judge for further and other consideration and action.

Pending the hearing or determination as to whether or not the children are neglected children, it is ordered that they be in the temporary custody and care of The Hamilton Children's Aid Society.

Names of Children

Sharon Gail Harris
 Florence Isobel Harris
 Charles William Harris
 FATHER—John Robert Harris,
 MOTHER—Lillian Ellen (Lewens) Harris

It is further ordered that the corporation of the municipality of The City of Hamilton pay the sum of \$1.65 a day from and including the 11th day of February, 1953, for the maintenance of each child by the Society in a temporary home, an institution, a foster-home, or elsewhere where children are not cared for without compensation.

On February 25, 1953, the hearing proceeded. The opening statement made by counsel for the respondent was:—"This is a renewal on adjournment today Your Honour, and we should like to proceed." At the conclusion of the hearing His Honour made an order dated February 25, 1953, providing that the child be permanently committed to the care and custody of the respondent "commencing the 25th day of February, 1953," and ordering the appellant to pay the sum of \$1.65 a day from and including the 11th day of February, 1953, for his maintenance.

Pursuant to leave granted by His Honour the appellant appealed to the Court of Appeal for Ontario. That Court dismissed the appeal, following its earlier decision in *Re Van Allen* (1), but granted leave to appeal to this Court.

1954
 CITY OF
 HAMILTON
 v.
 HAMILTON
 CHILDREN'S
 AID SOCIETY
 Cartwright J.

Counsel for the appellant seeks to distinguish the case at bar from *Re Van Allen* and, alternatively, asks us to over-rule that decision.

The ground of attack upon the order of His Honour Judge Burbidge is that it was made without jurisdiction by reason of the fact that the child had attained the age of 16 years before it was made. There is only one possible ground of distinction between the facts in the case at bar and those in *Re Van Allen*. In both the order committing the child permanently to the care of the respondent society was made after the child had attained 16 years of age but in *Re Van Allen* in the view of Hogg J. A. such order was made immediately before the expiration of the order, which had been made before the child attained the age of 16 years, committing her temporarily to the care of the Society for a period of twelve months while in the case at bar such order was made some twelve days after the expiration of the corresponding order. This difference in the facts does not appear to me to render the *ratio decidendi* of *Re Van Allen* inapplicable to the case at bar. In the case at bar the application to His Honour was made and came on for hearing before the temporary order had expired, but, presumably for the convenience of the parties or their counsel, the actual hearing and determination were adjourned for two weeks. In my view the learned Judge had jurisdiction to make the order complained of in this appeal on February 11, 1953, and did not lose jurisdiction by reason of adjourning the hearing for two weeks, or by reason of making the interim order of February 11 which seems to have been regarded as necessary to preserve matters *in statu quo* during the period of the adjournment. As was held in *Re Van Allen*, it was not a new "case" that came before the judge on February 25, 1953.

1954
CITY OF
HAMILTON
v.
HAMILTON
CHILDREN'S
AID SOCIETY

For the reasons given by my Lord the Chief Justice and for those given by Hogg J. A. in *Re Van Allen* (1), which in my opinion was rightly decided, I would dismiss this appeal with costs.

Appeal dismissed with costs.

Cartwright J. Solicitor for the appellant: *A. J. Polson.*

Solicitors for the respondent: *Phelan, O'Brien, Phelan & FitzPatrick.*

*PRESENT: Kerwin C.J. and Rand, Kellock, Locke and Fauteux JJ.