1963
May 21, 22
Oct. 1

LEO BLAIS, BISHOP OF PRINCE ALBERT, IN THE PROVINCE OF SASKATCHEWAN, EXECUTOR (*Defendant*) ..... APPELLANT;

AND

HONORE TOUCHET AND LUCIEN TOUCHET (*Plaintiffs*) ..... RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN

Wills—Charities—Gift to bishop for such works as would aid French Canadians of diocese—Whether bequest charitable.

The testator, a parish priest, by a holograph will written in French appointed his bishop as his executor and universal legatee and left him all his property "pour ses œuvres, mais pour les œuvres qui aideraient la cause des Canadiens français dans son diocèse". On an application to decide whether the bequest constituted a valid charitable trust, the trial judge held that the bequest was charitable. The Court of Appeal held that it was not. Both the trial judge and the Court of Appeal were of the opinion that the bishop did not take beneficially but as trustee and that by virtue of his office, the gift was limited to his charities or works arising from his religious responsibilities as the bishop. The trial judge held that by saying "mais pour les œuvres qui aideraient la cause des Canadiens français dans son diocèse", the testator was merely confining the charities within a certain field and that these were words of limitation in no way affecting the gift as a charity. The Court of Appeal held that these words enlarged the field of application of the bequest, and no longer made it imperative to apply it to purposes strictly charitable. An appeal from the decision of the Court of Appeal was brought to this Court.

Held: The appeal should be allowed.

The Court held that this particular gift to the bishop was charitable by virtue of his office and that the testator did not step outside the charitable field in imposing the limitation to work among French Canadians. *In re Garrad,* [1907] 1. Ch. 382; *In re Flinn,* [1948] 1 All E. R. 541; *In re Rumball,* [1956] Ch. 105, followed.

APPEAL from a judgment of the Court of Appeal for Saskatchewan[1], allowing an appeal from a judgment of McKercher J. Appeal allowed.

Hon. C. H. Locke, Q.C., and *D. G. Blair,* for the defendant, appellant.

J. G. Crepeau, for the plaintiffs, respondents.

*PRESENT: Taschereau C. J. and Cartwright, Abbott, Martland and Judson JJ.

[1] (1962), 38 W.W.R. 587, 34 D.L.R. (2d) 521.

The judgment of the Court was delivered by

JUDSON J.:—The question in this litigation is whether a certain disposition made in the will of the Reverend Father George Emile Touchet, parish priest at Duke Lake, Saskatchewan, dated August 14, 1955, is charitable. The will was in holograph form and written in French in the following words:

> Je désigne et nomme Son Excellence Mgr. Léo Blais, mon évêque, comme mon exécuteur et mon légataire universel. Je lui lègue donc tout ce que je possède de biens, (à part ce qui a déjà été prévu, donné et confié à M. Jules Couture ou son associé à 266 ouest St. Jacques, Montréal, P.Q.) à lui Mgr. Léo Blais, évêque de Prince Albert, pour ses œuvres, mais pour les œuvres qui aideraient la cause des Canadiens Français dans son diocèse.

The following literal translation into English was accepted by the Court of Appeal:

> I designate and appoint His Excellency Mgr. Leo Blais, my Bishop, as my Executor and my universal Legatee. I therefore give and bequeath to him all the property that I own (except that which has already been provided for, given and entrusted to Mr. Jules Couture or his associate at 266 St. James West, Montreal, P.Q.) to him Mgr. Leo Blais, Bishop of Prince Albert, for his works, but for such of the works as would aid the cause of the French Canadians of his diocese.

In the translation attached to the Letters Probate issued on December 15, 1959, "œuvres" is translated "charities" on each occasion of its use. In the translation accepted by the Court of Appeal it is literally translated as "works". McKercher J. held that the bequest was charitable. The Court of Appeal[1] held that it was not. The conflict is not as direct as the result might suggest. Both McKercher J. and the Court of Appeal were of the opinion that the bishop did not take beneficially but as trustee and that by virtue of his office, the gift was limited to his charities or works arising from his religious responsibilities as the bishop. McKercher J. held that by saying "mais pour les œuvres qui aideraient la cause des Canadiens français dans son diocèse", the testator was merely confining the charities within a certain field and that these were words of limitation in no way affecting the gift as a charity.

The Court of Appeal differed on this one point. They held that these words enlarged the field of application of the bequest, and no longer made it imperative to apply it to purposes strictly charitable.

[1] (1962), 38 W.W.R. 587, 34 D.L.R. (2d) 521.

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Judson J.

As a matter of construction, I cannot adopt this view. To me the construction put upon the bequest by McKercher J. is the correct one. Our task is to determine what this testator meant. He was an educated man and writing in his mother tongue. His bequest was to his bishop as trustee for certain purposes. This bequest to the bishop by virtue of his office is held to be charitable in both Courts. We must assume that the testator knew what he was doing, that he knew the meaning of his own words and the religious responsibilities of the bishop. Dictionary definitions recognize the use of "œuvre" in this context. I quote from:

(*a*) Larousse du XX^e^ Siècle:

> Admin. Ecclés. Fabrique d'une paroisse, revenu affecté à la construction, à la réparation des bâtiments, à l'achat et à l'entretien des objets nécessaires au service divin.

(*b*) Littré, Dictionnaire de la Langue française, Tome 5, (1957):

> En un sens plus restreint, bonnes œuvres, les charités que l'on fait, soit pour soulager les pauvres, soit pour des fondations pieuses ou charitables.

(*c*) Bélisle, Dictionnaire général de la Langue française au Canada:

> Toute sorte d'actions morales. Bonnes œuvres, actions inspirées par une morale pure et active; les charités que l'on fait.

With this well-recognized meaning of the word in the French language and its use in a will by a French-speaking parish priest who knew what he was writing about, it would, in my opinion, be error to hold that because he mentioned the application of the bequest in the terms above quoted, among French Canadians in the diocese, by so doing he stepped outside the charitable field.

This problem is one of construction in each particular case. Fine distinctions have been made from time to time and it is not always easy to see why in one case a court would decide that a case fell on the charitable side of the line and in another case on the non-charitable side. Evershed M.R. in *In re Rumball*[1] reviewed all the recent litigation where these problems have arisen. The following is his summary in one of the opening paragraphs of his judgment:

> Questions of this kind are notoriously difficult and, no doubt, the distinctions illustrated by the cases appear at times very fine. Thus, a gift to the vicar and churchwardens of a particular parish "for such uses as they shall, in their sole discretion, think fit"; and a gift "to His

[1] [1956] Ch. 105, [1955] 3 All E. R. 71.

Eminence the Archbishop of Westminster Cathedral, London, for the time being to be used by him for such purposes as he shall, in his absolute discretion, think fit" have been held to be good charitable gifts (*In re Garrard,* [1907] 1 Ch. 382, and *In re Flinn,* [1948] 1 All E. R. 541). But a gift to the Archbishop of Brisbane for such purposes "as the Archbishop may judge most conducive to the good of religion in this diocese" has been held by the Privy Council to be bad (*Dunne v. Byrne,* [1912] A.C. 407). Again, a gift to a vicar "for parish work" has been held bad by the House of Lords in *Farley v. Westminster Bank* [1939] 3 All E.R. 491; but a gift to a vicar to be used by him as he should think fit "for his work in the parish" was held in 1946 by Romer J. to be good (*In re Simson,* [1946] 2 All E.R. 220); and in *In re Beddy* in 1953, unreported, where the words of the gift bore a resemblance (at least) to those in the present case—for they were a gift "to the Roman Catholic prelate who shall be Archbishop of Westminster at the time of my death, to use for such purposes in the diocese as he may choose"—Harman J., expressing himself as not willing to add to the fineness of the distinctions already made, held the gift to be bad.

A recent author, Keeton in The Modern Law of Charities (1962) p. 65, has commented that this branch of the law of charities is suffering from over-technicality. I join with others who have said that they do not wish to add to it. I therefore follow the line of reasoning in *In re Garrad, In re Flinn* and *In re Rumball* and hold that this particular gift to the bishop is charitable by virtue of his office and that the testator did not step outside the charitable field in imposing the limitation to work among French Canadians.

I would allow this appeal and restore the judgment of McKercher J. In the circumstances, I would direct that the costs of both parties, here and in the Court of Appeal, be paid out of the estate, those of the executor as between solicitor and client.

Appeal allowed.

Solicitors for the defendant, appellant: Cuelenaere & Hall, Prince Albert.

Solicitors for the plaintiffs, respondents: Crepeau & Simonot, Prince Albert.