

# Blais v. Touchet, [1963] S.C.R. 358

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Commentary

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## G. GIFTS

*Blais v. Touchet*, [1963] S.C.R. 358.

In *Blais v. Touchet*,<sup>1</sup> a testator in his will left all his property to a named bishop "pour ses oeuvres, mais pour les oeuvres qui aideraient la cause des Canadiens Français dans son diocèse."

The bishop claimed no beneficial interest in the property, and the trial judge decided he took no such beneficial interest. Thus the only question on appeal was whether this was a valid charitable gift. If not, the gift would fail, on either of two grounds: that it was of indefinite duration; or that it was uncertain. Neither ground defeats an otherwise valid charitable gift.

The Supreme Court of Canada held there was a valid charitable gift, reversing the decision of the Saskatchewan Court of Appeal and restoring the judgment of McKercher J., at trial.

The trial judge translated "oeuvre" to mean "charity". He is quoted by the Court of Appeal<sup>2</sup> as saying:

The will said 'for his charities . . .' meaning for the religious responsibilities of the bishop, and went on to say 'but for his charities which will aid the cause of the French Canadians in his diocese.' This limits the application of the trust by the bishop to the French Canadians in the Diocese of Prince Albert.

In arriving at his decision that this was a valid charitable gift, McKercher J. relied on *Re Simson*<sup>3</sup> where a gift in a will to "the Vicar of St. Luke's Church, Ramsgate, to be used for his work in the parish" was held to be a valid charitable gift for the benefit of the parish.

The Court of Appeal based its approach on a statement in *Re Spensley's Will Trusts*<sup>4</sup> where Jenkins, L.J. purported to sum up the law in this area as follows:

Where there is a gift to a person who holds an office the duties of which are in their nature wholly charitable, and the gift is made to him in his official name and by virtue of his office, then, if the purposes are not expressed in the gift itself, the gift is assumed to be for the charitable purposes inherent in the office. . . . But where the purposes of a gift are plainly expressed in terms not confining them to purposes which are in the legal sense charitable they cannot be confined to charitable purposes merely by reference to the character of the trustee.

The Court of Appeal translated the bequest as "for his works, but for such of the works as would aid the cause of French Canadians in his diocese." The Court said that had the words of the bequest ended at the phrase "for his works" there would have been strong argument that the gift was for the charitable purposes inherent in the office of the bishop. However, said the Court, the added words, namely, "for such of the works as would aid the cause of French Canadians in his diocese" are enlarging words, covering purposes

<sup>1</sup> (1962) 34 D.L.R. (2d) 521 [Court of Appeal], [1963] S.C.R. 358.

<sup>2</sup> (1962) 34 D.L.R. (2d) 521 at p. 522.

<sup>3</sup> [1946] 1 Ch. 299.

<sup>4</sup> [1954] 1 All E.R. 178 at p. 183.

beyond the ordinary meaning of charity, not limited to ecclesiastical purposes inherent in the bishop's office. Therefore, said the Court, there was no valid charitable gift.

The unanimous judgment of five members of the Supreme Court of Canada was delivered by Judson, J. With regard to determining the meaning of the added words, he says the testator, an educated man writing in his mother tongue, must be assumed to know the meaning of his own words and to know the religious responsibilities of the bishop.

The learned judge then refers to three French language dictionaries for the meaning of the word "oeuvre", and without translating the definitions in these dictionaries, concludes that with this "well-recognized" meaning of the word in the French language, and its use in a will by a French priest who "knew what he was writing about" the gift was charitable by virtue of the bishop's office, and the added words in the will did not take the gift out of the charitable field. He adds that cases in this area depend on the construction of the particular words used, that the law in this area is over-technical, and that he is unwilling to make it more so. He says he follows *In Re Garrard*,<sup>5</sup> *Re Flinn*<sup>6</sup> and *Re Rumball*.<sup>7</sup>

The above decision may perhaps best be commented upon by a general glimpse of the murky law relating to charitable gifts to holders of ecclesiastical office. No attempt is made here to define "charity" or "charitable purposes" in the legal sense.

A convenient starting point is the statement in *Re Spensley's Will Trusts*<sup>8</sup> quoted by the Court of Appeal in the present case. The first part of this statement was that

Where there is a gift to a person who holds an office the duties of which are in their nature wholly charitable, and the gifts made to him in his official name and by virtue of his office, then, if the purposes are not expressed in the gift itself, the gift is assumed to be for the charitable purposes inherent in the office.

It would seem that the offices of vicar, churchwarden, bishop, archbishop and the like are such offices. At any rate the cases accept that a gift to vicars and churchwardens etc. *simpliciter* (without more) is a valid charitable gift for ecclesiastical purposes in the office. See, for example, *Re Garrard*.

Exactly why this should be so is not clear, for as pointed out in *Re Simson*<sup>9</sup> besides his ecclesiastical functions, a vicar undertakes various activities that are merely benevolent and not charitable in the legal sense.

<sup>5</sup> [1907] 1 Ch. 382.

<sup>6</sup> [1943] 1 All E.R. 541.

<sup>7</sup> [1956] 1 Ch. 105.

<sup>8</sup> *Supra*, footnote 4 at p. 183.

<sup>9</sup> [1946] 1 Ch. 299.

The second part of the *Spensley* analysis is that

But where the purposes of a gift are plainly expressed in terms not confining them to purposes which are in the legal sense charitable they cannot be confined to charitable purposes merely by reference to the character of the trustee.

This statement springs from *Dunne v. Byrne*<sup>10</sup> where Lord McNaghten said he found it difficult to see how a trust expressed "in plain language" could be limited or modified in scope by reference to the position or character of the trustee. Commenting on this statement in *Re Ashton's Estate*,<sup>11</sup> Sir Wilfred Greene, M.R., said Lord McNaghten's remarks were directed to trusts expressed in plain language and that Lord McNaghten

did not mean to suggest that the character of the trustee is a thing which is to be disregarded in construing the gift as a whole. I can well conceive of cases where the purpose named takes its colour from the character of the trustee. . . .

Leaving theory for practice, we turn to some of the decisions of the courts. It is to be noted that in all these cases the holder of the ecclesiastical office is regarded as taking no beneficial interest, and the only question is the effect of any additional words in the gift.

In *Re Garrard*,<sup>12</sup> a gift to the vicar and churchwardens for the time being of a certain parish "to be applied by them in such manner as they shall in their sole discretion think fit" was held to be a valid charitable gift. Jenkins, J. said that the quoted words merely left it up to the trustee to settle the particular mode of application of the gift within the charitable purposes of the legacy.

In *Dunne v. Byrne*<sup>13</sup> the Court said a bequest to "the Roman Catholic Archbishop of Brisbane and his successors to be used and expended wholly or in part as such Archbishop may judge most conducive to the good of religion in this diocese" was held not a good charitable bequest. The words used were not the equivalent of the expression "for religious purposes"; something may be conducive to the good of religion in a particular diocese or district without being charitable in the legal sense.

In *Re Bain*<sup>14</sup> there was a bequest to the vicar of St. Alban's Church, Holborn, "for such objects connected with the church as he shall think fit." It was held that the quoted words meant the discretion exercised by the vicar must be within church, and not parochial, purposes. The gift was a valid charitable gift.

In *Re Davies*,<sup>15</sup> the gift was "to the archbishop for the time being of the Archdiocese of Cardiff for work connected with the

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<sup>10</sup> [1912] A.C. 407.

<sup>11</sup> [1938] 1 All E.R. 707 at p. 710.

<sup>12</sup> [1907] 1 Ch. 382.

<sup>13</sup> *Supra*, footnote 10.

<sup>14</sup> [1930] 1 Ch. 224.

<sup>15</sup> (1932) 48 T.L.R. 539, *affd.* 49 T.L.R. 5.

Roman Catholic Church in the said archdiocese." The gift was held not to be charitable because the words quoted would cover many pious, philanthropic or benevolent purposes not charitable in the legal sense. The words "connected with" enlarge the purposes beyond the ordinary work of the Roman Catholic church.

In *Farley v. Westminster Bank*,<sup>16</sup> the gift was to "the vicar and churchwardens of St. Columba's Church, Hoxton (for parish work) . . ." This was held not to be a valid charitable gift. Lord Atkin said the words "parish work" were so vague as to go far beyond the meaning of charity, used in the sense of being for a religious purpose. He says the expression covers all the ordinary activities of the parish, some of which are for religious purposes, and some not. The fact that an activity is conducive to the moral and spiritual good of the vicar's congregation is not enough to bring it within the legal meaning of charitable.

In *Re Simson*,<sup>17</sup> the gift to the vicar "to be used for his work in the parish" was held to be a valid charitable gift. The Court said the issue was the effect of the quoted words. If they did not enlarge what went before, or if they narrow it, this would be a valid charitable gift. It was held that the words "for his work" did not enlarge what went before, and the words "in the parish" are limiting, i.e. preclude work outside the parish, such as foreign mission work.

In *Re Eastes*,<sup>18</sup> the gift was to the vicar and churchwarden for the time being of a certain area "for any purposes in connection with the said church which they may select it being my wish that they shall especially bear in mind the requirements of the children in the said parish of St. George's Church and I declare that in no circumstances shall they . . . use any portion of the said moneys in connection with the furtherance of overseas missions." It was held to be a valid charitable gift. The words "in connection with" did not import something wider than the strictly religious purposes of the church; neither did the words relating to the children—this was just a request that the children be specially kept in mind. The reference to the parish was only a geographical expression denoting the children, who being in the parish, would normally go to the parish church. Thus the words did not import parochial work as distinct from the religious purposes of the church.

In *Re Flinn*,<sup>19</sup> the gift was to an archbishop "for such purposes as he shall in his absolute discretion think fit." It was held a valid charitable gift. After holding that the archbishop did not take beneficially, the Court said that to give a wholly unrestricted meaning to the words would not be consistent with such holding because it would indicate a beneficial interest was taken, and so the words were con-

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<sup>16</sup> [1939] A.C. 430.

<sup>17</sup> *Supra*, footnote 3.

<sup>18</sup> [1948] 1 All E.R. 536.

<sup>19</sup> *Supra*, footnote 6.

strued to mean absolute discretion within the charitable purposes inherent in his office.

In *Re Rumball*<sup>20</sup> the gift was to "the Bishop for the time being of the diocese of the Windward Islands to be used by him as he thinks fit in his diocese." This was held to be a valid charitable gift. The bishop was to take by virtue of his office and got no beneficial interest, and the words following the description of him were limited by the charitable character of his office. Evershed, M.R., approved the argument of counsel for the bishop and said:<sup>21</sup>

The question is, upon the construction of the language used, whether the words following the gift are intended merely to indicate that, within the scope of the trusts properly appropriate to the nature of the office by which the donee is described, the discretion is entirely the donee's; or whether, by the added words, the donor is himself intending to state, or at least to indicate, the trusts upon which the donee is to hold the property. If the latter is the true interpretation then the further question of construction arises whether the trusts so indicated or stated comprehend non-charitable objects. But where the words following the gift to the donee are absolutely general, . . . the right inference to be drawn . . . is, that the words are intended merely to indicate that, within the scope of the trusts already implicit in the gift, the discretion is the donee's; for otherwise the added words would permit beneficial enjoyment by the donee of the fund disposed of.

A further requirement for validity of charitable gifts except those for the relief of poverty is that the gift must be for the benefit of the community or an appreciably important class of the community. The inhabitants satisfy this requirement, but private individuals or a fluctuating body thereof, do not: *Verge v. Sommerville*.<sup>22</sup>

In *Oppenheim v. Tobacco Securities*,<sup>23</sup> the House of Lords said the words "section of the community" indicates that the possible beneficiaries must not be numerically negligible, and that the quality that distinguishes them from other members of the community so that they form by themselves a section of it, must be a quality which does not depend on their relation to a particular individual. *Re Cox*,<sup>24</sup> where the relationship was common employer, is an example.

The decision of the Supreme Court of Canada in *Blais v. Touchet*,<sup>25</sup> although not a helpful case, at least does not confuse this area of the law to any greater extent than before. In the end the case may probably be justified solely on the basis of translating "oeuvres" to mean charities. In *Chichester Diocesan Fund v. Simpson*<sup>26</sup> at p. 356 Lord Wright said:

The Court of Chancery . . . have adopted 'charity' or 'charitable' as a sufficient general description in cases where testators have left bequests to such charitable objects as their executors may select.

<sup>20</sup> *Supra*, footnote 7.

<sup>21</sup> *Ibid.*, at p. 115.

<sup>22</sup> [1924] A.C. 496 at p. 499.

<sup>23</sup> [1951] 1 All E.R. 31.

<sup>25</sup> *Supra*, footnote 1.

<sup>26</sup> [1944] A.C. 341.

And at p. 368 Lord Simonds said:

[the word] 'charitable' . . . is a term of art with a technical meaning and that is the meaning which the testator must be assumed to have intended.

On this basis the bequest is a valid charitable gift once translated as it was by the Supreme Court and the Court of Appeal. The only other hurdle and, it would seem, one easily cleared, is the *Verge v. Sommerville*<sup>27</sup> requirement. However, it would seem clear that French Canadians of a diocese would be a "section of the community."

D.S.F.