IN RE SAMUEL BENJAMIN THOMAS CHARITY TRUST, GRANVILLE and OTHERS *v.* ATTORNEY-GENERAL

SUPREME COURT (Beoku-Betts, J.): January 27th, 1950
(Civil Case No. 367/49)

[1] **Charities—cy-près doctrine—impracticable purpose—doctrine applied where main object of gift defeated by operation of discriminatory condition—"Agricultural Academy . . . for education of male natives of Colony"—insufficient number of such natives defeats main object so gift extended to male natives of Protectorate:** Where it proves impracticable to carry out a charitable gift because a discriminatory condition is attached to the gift, the strict application of which would defeat its main object, the *cy-près* doctrine will be applied to remove the discriminatory condition. The main object of a gift for an "Agricultural Academy . . . for the education of male natives of the Colony" is defeated by the application of the discriminatory condition if insufficient numbers of male natives are forthcoming from the Colony, and by the operation of the *cy-près* doctrine the gift may be opened to male natives of the Protectorate too (page 15, line 1—page 16, line 17).

[2] **Charities—cy-près doctrine—meaning—court substitutes object as near as possible to intention of donor for failed or impracticable object:** Where the intention of the creator of a charitable trust has failed or cannot be carried out, the court may substitute another mode or object as near as possible to the intention of the donor (page 14, lines 22–28).

[3] **Education—educational charities and endowments—gift creating "Agricultural Academy . . . for education of male natives of Colony" —insufficient number of such natives means main object defeated by operation of discriminatory condition—cy-près doctrine applied to extend gift to male natives of Protectorate:** See [1] above.

[4] **Succession—wills—construction—"Colony" to be construed as area distinct from Protectorate:** Although, since the creation of the Protectorate of Sierra Leone in 1898, certain portions of the Colony of Sierra Leone have been administered for executive and judicial purposes as being part of the Protectorate, the Colony has always been an area distinct from the Protectorate, and any reference to it in a will must be construed accordingly (page 13, line 31—page 14, line 6).

The plaintiffs applied by originating summons for the construction of a will.

The testator, by his will made in 1900, left money to trustees to found an agricultural college "for the education of male natives of the Colony." Due in part to a lack of candidates from the Colony,

the work of the college had to be suspended. The plaintiffs, the present board of management, applied for the court to construe the will as relating to male natives of the Protectorate as well as male natives of the Colony.

The plaintiffs contended that: (a) in 1900 when the will was made, the word "Colony" included the Protectorate, and the will should be construed accordingly; or (b) under the *cy-près* doctrine the grant should be extended to admit to the benefit of the trusts of the charity male natives of the Protectorate.

Case referred to:

(1) *In re Dominion Students' Hall Trust, Dominion Students' Hall Trust* v. *Att.-Gen.*, [1947] Ch. 183; (1946), 176 L.T. 224, *dicta* of Evershed, J. applied.

R.B. Marke for the plaintiffs.
The defendant appeared in person.

BEOKU-BETTS, J.:

This is an application by originating summons on behalf of the members of the board of management of the Samuel Benjamin Thomas Agricultural Academy for the determination of the following questions, namely: whether the word "Colony" in paras. 10, 11, 12, 13 and 14 of the will of Samuel Benjamin Thomas (deceased) should be understood in relation to the date of the said will and the objects referred to in those paragraphs of the will as having the meaning which the word "Colony" has today, or as having the meaning it had in the year 1900; or, in the alternative, whether the benefit granted by paras. 10, 11, 12, 13 and 14 of the will should be extended to male natives of the Protectorate of Sierra Leone.

Learned counsel on behalf of the plaintiffs—the board of management of the charity—submitted that the word "Colony" in the year 1900, when the will was made, included the Protectorate. That is historically incorrect. Before the Protectorate was declared in 1898, the portions of the territory now known as the Protectorate formed no part of the Colony. The Protectorate was declared in 1898 and it left unaffected the area known as the Colony, although since that date certain portions of the Colony have been administered for executive and judicial purposes as the Protectorate. Counsel referred to the fact that the first legislation for the Protectorate was declared as such by an Order in Council of the Queen in

Council and not by the Legislative Council, which subsequently exercised certain rights of making laws for the Protectorate given to it by the Queen in Council. In my opinion, the word "Colony" in Sierra Leone has always meant an area distinct from the Protectorate, and that meaning must be given to it in the relevant paragraphs of the will.

The next question is whether the *cy-près* doctrine can be made to apply in this case so as to admit to the benefit of the trusts of the charity male natives of the Protectorate. In para. 13 of the will, the testator provided that the trustees—"build . . . an Agricultural Academy or College with the necessary appurtenances and out-houses . . . for the education of *male natives of the Colony* aforesaid in the theory and practice of profitable farming and agriculture etc." In paras. 10, 11 and 14 "natives of the Colony" were clearly designated. The scheme of the charity would thus be seen to be for the education of male natives of the Colony, and by the accepted and correct definition of the word "Colony" male natives of the Protectorate would be excluded and could not benefit from the trusts.

The application is that this is a case where the *cy-près* doctrine should apply, and that the court should enlarge the objects to benefit and include male natives of the Protectorate. The *cy-près* doctrine is the exercise of the jurisdiction of the court that in the administration of a charitable trust, where the intention of the donor has failed or cannot be carried out, it should substitute another mode or object as near as possible to the intention of the donor. The primary rule is that the intention of the donor must be observed as far as possible.

The doctrine as it stood originally was that if the charitable purpose prescribed by the donor takes effect in the first instance but subsequently fails, as by the abolition of a particular form of punishment, or the extinction of a particular class to be benefited, then the doctrine should be applied (see 4 *Halsbury's Laws of England*, 2nd ed., at 224). On that law there must be evidence that male natives of the Colony have ceased to exist.

This is not the case put forward by the applicants. The application is that although male natives of the Colony have not ceased, they are not forthcoming as students to benefit from the trusts of the charity in sufficient numbers, and that the work of the Academy had to be suspended owing, among other reasons, to the insufficiency of the number of candidates from the Colony.

The *cy-près* doctrine is now extended to include persons, who if excluded, would create an undesirable and unnecessary discrimination. In the case of *In re Dominion Students' Hall Trust, Dominion Students' Hall Trust* v. *Att.-Gen.* (1), a company limited by guarantee maintained a hostel for male students of the overseas dominions of the British Empire. The benefits were restricted to students of European origin. On application to delete the words "of European origin," the court granted the petition on the ground that to retain the condition that the hostel should be confined to members of the British Empire "of European origin" might defeat the charity's main object of promoting community of citizenship, culture and tradition among all members of the British Commonwealth of Nations, and might antagonize both white and coloured students. It was therefore "impossible" within the meaning of the word used in the authorities, that the intention of the charity should be carried out unless the "colour bar" was removed. Evershed, J., in delivering judgment, said, *inter alia* ([1947] 1 Ch. at 186; 176 L.T. at 224):

> "It is not necessary to go to the length of saying that the original scheme is absolutely impracticable. Were that so, it would not be possible to establish in the present case that the charity could not be carried on at all if it continued to be so limited as to exclude coloured members of the Empire.
>
> I have, however, to consider the primary intention of the charity. At the time when it came into being, the objects of promoting community of citizenship, culture and tradition among all members of the British Commonwealth of Nations might best have been attained by confining the Hall to members of the Empire of European origin. But times have changed . . . and it is said that to retain the condition, so far from furthering the charity's main object, might defeat it and would be liable to antagonize those students, both white and coloured, whose support and goodwill it is the purpose of the charity to sustain. The case, therefore, can be said to fall within the broad description of impossibility illustrated by *In re Campden Charities* and *In re Robinson*."

The present application before me may be stated to be supported on the same principles. When the will of the testator was made, it was possible to provide for the education of males of the Colony in the theory and practice of profitable farming and agriculture without including male natives of the Protectorate. In all probability in the year 1900 very few male natives of the Protectorate could

have enjoyed the benefit of the scheme. But today times have changed. It is of the essence of the promotion and furtherance of education in any form in Sierra Leone, whether in the Colony or the Protectorate, that there should be no discrimination between male natives of the Protectorate and male natives of the Colony. To continue a scheme which perpetuates such a discrimination is to antagonize the people of the Protectorate in respect of those of the Colony, more especially as the property is situated in a portion of the Protectorate where the support and goodwill of the people of the Protectorate is necessary. There is evidence that to restrict the membership to male natives of the Colony would also have the effect of defeating the object of the charity, as students from the Colony are not forthcoming in sufficient numbers. In the circumstances I make the order and modify the scheme or objects of the charity by substituting the words "male natives of Sierra Leone," meaning both the Colony and the Protectorate, for the words "male natives of the Colony" in paras. 10, 11, 13 and 14 of the will.

The costs of this application are to be taxed as between solicitor and client and paid out of the estate.

Application granted.

IN RE ROGERS-WRIGHT (A LEGAL PRACTITIONER) and IN RE LEGAL PRACTITIONERS (DISCIPLINARY COMMITTEE) ORDINANCE (CAP. 118)

SUPREME COURT (Smith, C.J.): February 11th, 1950
(Civil Case No. 378/49)

[1] **Legal Profession—disciplinary proceedings—conduct tending to bring profession into disrepute—conduct must be disgraceful or dishonourable to professional brethren of good repute and competency:** If it is shown that a legal practitioner in the pursuits of his profession has acted in a way which can be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency, then it is open to the court to exercise its discretion to strike him off the Roll (page 20, lines 6–15; page 21, lines 3–8).

[2] **Legal Profession—disciplinary proceedings—court has discretion to strike practitioner off Roll:** See [1] above.

[3] **Legal Profession—disciplinary proceedings—conduct tending to bring profession into disrepute—solicitor must not mislead court or withhold relevant facts:** A solicitor is guilty of dishonourable conduct if he wilfully misleads the court by stating facts which are untrue,

and he has a duty not to withhold any information which should be before the court (page 20, lines 25–31).

[4] **Legal Profession—disciplinary proceedings—conduct tending to bring profession into disrepute—solicitor should act honourably in dealing with client's adversary:** While there is no relationship between a solicitor and his client's adversary which gives rise to any duty between them, he should nevertheless act honourably in his dealings with him (page 20, lines 21–25).

[5] **Legal Profession—disciplinary proceedings—conduct tending to bring profession into disrepute—solicitor who knowingly allows false affidavit to be made guilty of professional misconduct:** A solicitor who allows his client to make an affidavit containing a statement which the solicitor knows to be false may be suspended from practising for professional misconduct (page 20, lines 16–18).

[6] **Legal Profession—professional etiquette—relationship with other practitioners—solicitor should act honourably in dealings with client's adversary:** See [3] above.

The applicant sought an order suspending the respondent legal practitioner from practising within the jurisdiction of the court, or alternatively striking him off the Roll of the court for professional misconduct and improper conduct.

A grant of administration with will annexed in respect of an estate was made to the Official Administrator. Fourteen relatives of the deceased hired the respondent to contest the grant. The respondent instituted three separate suits on behalf of different groups of these relatives and signed the writs in respect of these suits. Affidavits which were later shown to contain false statements were also prepared in the respondent's office. The Attorney-General instituted the present proceedings against the respondent in respect of professional misconduct in accepting three different sets of clients with conflicting interests and in allowing two false affidavits to be filed.

The Supreme Court considered what amounted to professional misconduct on the part of a solicitor, and whether the respondent had been guilty of it in the circumstances of the case.

Cases referred to:

(1) *Allinson* v. *General Council of Medical Education & Registration*, [1894] 1 Q.B. 750; [1891–4] All E.R. Rep. 768, *dictum* of Lopes, L.J. applied.

(2) *Ex p. Brounsall* (1778), 2 Cowp. 829; 98 E.R. 1385, *dictum* of Lord Mansfield applied.

(3) *In re Cooke* (1889), 5 T.L.R. 407; 33 Sol. Jo. 397, *dictum* of Lord Esher, M.R. applied.

(4) *In re Davies* (1898), 14 T.L.R. 332.

(5) *In re Gray, ex p. Inc. Law Socy.* (1869), 20 L.T. 730, applied.

(6) *Myers* v. *Elman*, [1940] A.C. 282; [1939] 4 All E.R. 484.

(7) *In re a Solicitor, ex p. Law Socy.*, [1912] 1 K.B. 302; [1911–13] All E.R. Rep. 202, *dicta* of Darling, J. applied.

The applicant appeared in person with *Benka-Coker, Ag. Sol.-Gen.* *Miss Wright, Hotobah-During* and *O.I.E. During* for the respondent.

SMITH, C.J.:

In this case the court is moved by the Attorney-General under s.26 of the Legal Practitioners (Disciplinary Committee) Ordinance (*cap.* 118).

The respondent, Mr. C.B. Rogers-Wright, is a barrister and solicitor of the Supreme Court of Sierra Leone within the meaning of s.2 of the Legal Practitioners Ordinance (*cap.* 117) and a legal practitioner within the meaning of s.2 of the Legal Practitioners (Disciplinary Committee) Ordinance (*cap.* 118). By his motion paper, dated November 18th, 1949, the Attorney-General asks for an order that the court may suspend Cyril Bunting Rogers-Wright, a legal practitioner of the court, from practising within the jurisdiction of the court for any specific period, or that the court may order the Master to strike the name of the said Cyril Bunting Rogers-Wright off the Roll of the court for professional misconduct and improper conduct:

"1. On or about July 16th, 1948, as legal practitioner of the said court he caused to be issued out of the said court on behalf of three separate and different sets of clients three writs of summons, namely Civil Cases 220/48, 221/48 and 222/48, indorsed with inconsistent and conflicting claims as to the testacy or intestacy of one Mormodu Allie, late of No. 8 Magazine Street, Freetown, in the Colony of Sierra Leone, who died on January 22nd, 1948.

2. As legal practitioner of the said court he prepared and caused to be sworn to, filed and delivered the following affidavits as to the testacy or intestacy of the said Mormodu Allie, deceased, one or two of which he, the said Cyril Bunting Rogers-Wright, knew or ought to have known to be wholly or substantially false:

(i) In a suit, Civil Case 220/48, issued out of the said court —(a) an 'affidavit to lead citation to bring grant' sworn on July 14th, 1948, and filed on July 16th, 1948, alleging that the deceased Mormodu Allie died intestate; and (b) an 'affidavit of scripts' sworn on September 7th, 1948, and filed in support of the claim in the suit, that the said Mormodu Allie died intestate.

(ii) In a suit, Civil Case 222/48, issued out of the said court —an 'affidavit to lead citation to bring grant' sworn on July 16th, 1948, alleging *inter alia* that the deceased, Mormodu Allie, died testate leaving a valid will dated in 1939 in which Sockna Mormodu Allie, Alhaji Baba Allie, Kemoh Allie, Ajah Fatmatta Kata and Alhadi Antumani were appointed executors."

The motion was supported by an affidavit by the Attorney-General and in the course of the proceedings further affidavits were filed on his behalf. Mr. Kempson, an advocate of the Supreme Court, gave evidence in support of the motion and produced a letter dated September 1st, 1948, which he received from the respondent. The assistant Master and Registrar also gave evidence and produced the records in Suits Nos. 220/48, 221/48 and 222/48. He also produced three duplicate receipt books in use in the Master and Registrar's office in July and September 1948. The advocate for the respondent subsequently produced, under protest, the relevant original receipts. The respondent and others filed affidavits in opposition to the motion. One of the deponents, Marie Cole, was cross-examined on her affidavit and, as a so-called managing clerk, gave a pitiable exhibition.

After a careful and anxious examination of all the evidence, I have no hesitation in finding that the allegations contained in paras. 1 and 2 of the motion paper have been proved. I am in agreement with the submission of the learned Solicitor-General that the note to O.XIX, r.4 of the Rules of the Supreme Court in the *Annual Practice*, 1948, at 364, headed "Alternative and Inconsistent Allegations," has no bearing on this case.

In view of the above finding of fact I have now to consider whether the conduct of the respondent amounts to professional misconduct and/or improper conduct.

In the case of *In re a Solicitor, ex p. Law Socy.* (7), Darling, J. says ([1912] 1 K.B. at 311–312; [1911–13] All E.R. Rep. at 204):

"I do not think I need attempt to add anything to the definition

which was given in *Allinson* v. *General Council of Medical Education & Registration* [(1) ([1894] 1 Q.B. at 763; [1891–4] All E.R. Rep. at 773)]. In that case Lopes L.J. said: 'The Master of the Rolls has adopted a definition which, with his assistance and that of my brother Davey, I prepared. I will read it again: "If it is shown that a medical man, in the pursuit of his profession, has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency, then it is open to the General Medical Council to say that he has been guilty of infamous conduct in a professional respect."' . . . . The Law Society are very good judges of what is professional misconduct as a solicitor, just as the General Medical Council are very good judges of what is misconduct as a medical man."

In the case of *In re Gray, ex p. Inc. Law Socy.* (4), a solicitor who had allowed his client to make an affidavit containing a statement which he knew to be false was suspended from practising.

I would next quote from the judgment of Lord Esher, M.R. in *In re Cooke* (3) (5 T.L.R. at 408; 33 Sol. Jo. at 397):

"A solicitor had no relation with his client's adversary which gave rise to any duty between them. His duty was, however, not to fight unfairly, and that arose from his duty to himself not to do anything which was degrading to himself as a gentleman and a man of honour. He had, however, a duty to the Court, and it was part of that duty that he should not keep back from the Court any information which ought to be before it, and that he should in no way mislead the Court by stating facts which were untrue. If either a solicitor or a barrister were wilfully to mislead the Court he would be guilty of dishonourable conduct."

I would also refer to the cases of *In re Davies* (4) and *Myers* v. *Elman* (6) and more especially to the opinions of Lord Atkin and Lord Wright therein. In the result I find that the respondent herein was personally guilty of professional misconduct (a) in accepting three different sets of clients with what he knew or should have known were conflicting interests, and in issuing the three writs in Suits Nos. 220/48, 221/48 and 222/48; and (b) in allowing two affidavits, one of which he must have known or should have known to be false, to be filed.

As regards the question of in what manner the respondent

should be disciplined, I would quote the words of Lord Mansfield in *Ex p. Brounsall* (2) (2 Cowp. at 829–830; 98 E.R. at 1385):

"But the question is, whether, after the conduct of this man, it is proper that he should continue a member of a profession which should stand free from all suspicion . . . . It is not by way of punishment; but the court on such cases exercise their discretion, whether a man whom they have formerly admitted, is a proper person to be continued on the roll or not."

Before proceeding to make any order, I should like to hear the acting Solicitor-General as to whether he has anything to say which may assist the court in assessing punishment. Counsel for the respondent will of course be given an opportunity to say anything he may deem fit in mitigation of the respondent's misconduct.

[The acting Solicitor-General gave the court details of the respondent's two previous suspensions from practice in 1940 and 1941. The learned Chief Justice then continued:]

I order that the Master do strike the name of Cyril Bunting Rogers-Wright off the Roll of the Court. The respondent will pay the costs of these proceedings to the Attorney-General. The application for a stay of execution is refused.

Order accordingly.

SOLOMON and SOLOMON (trading as A. AND E. SOLOMON) *v.* ABOUD

SUPREME COURT (Beoku-Betts, J.): March 17th, 1950
(Civil Case No. 100/49)

[1] **Civil Procedure—parties—plaintiffs—trespass to land—person in possession proper plaintiff—reversioner can recover only for injury to reversion:** If land is in the possession of a tenant, he is the proper plaintiff to sue for trespass committed in respect of the land; but where the trespass is not merely of a temporary nature, and is injurious to the reversion, the reversioner, although he cannot sue in trespass, may sue for the injury done to his interest (page 24, lines 24–29).

[2] **Injunctions—mandatory injunctions—balance of convenience to be considered—inconvenience to defendant disregarded where injunction only remedy to ensure adequate justice or defendant's conduct unconscionable:** A mandatory injunction will not as a rule be granted without taking into consideration the comparative con-