

that only if it be proved that both parties wilfully and knowingly went through what they knew was an irregular marriage can it be made void (see *R. v. Inhabitants of Wroxton*, 4 B and Ad. 640).<sup>1</sup>

I am far from satisfied that the parties have had the necessary knowledge or intent, but that point it is not necessary to decide.

The order of the Court is that Sudamma is discharged from the custody of Rampiari, and Surajpal is entitled to his custody.

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## RE ESTATE OF HARPER DECEASED.

[Civil Jurisdiction (Howell, Acting C.J.) November 26, 1932.]

*Death Duties Ordinance 1920<sup>2</sup>—bequest to Parish Councils in Scotland for Charitable objects—whether liable to succession Duty.*

A testator bequeathed to certain parish councils in Aberdeenshire, Scotland, pecuniary legacies for charitable objects. The Commissioner of Stamp Duties assessed the legacies for succession duty under the provisions of the Death Duties Ordinance 1920. The Executors of the will required the Commissioner to state a case for the opinion of the Supreme Court. It was agreed that by virtue of s. 6 of the Local Government (Scotland) Act 1929 the County Council of Aberdeenshire had succeeded to the rights and trusteeships of the parish councils and that the stated objects of the bequests were within the administrative functions of the Parish Councils in Scotland as they existed at the date of the testator's will. The question of law for the opinion of the Court was whether the successor to the above legacies is a corporation of persons for religious, charitable or educational purposes and whether the legacies are exempt from succession duty.

**HELD.**—The corporations contemplated by the exemption in the Death Duties Ordinance, 1920, are corporations either wholly or at any rate primarily formed for charitable purposes.

[**EDITORIAL NOTE.**—See *In re Diplock, Wintle v. Diplock* (1941) Ch. 253 at p. 264 for reference to a charitable purpose to be achieved in a non-charitable institution.]

CASE STATED by the Commissioner of Stamp Duties to determine whether certain legacies are exempt from succession duty.

*G. F. Grahame* for the Executors.—Some of the objects of the corporation (County Council) are charitable—the Council is a corporation for charitable purposes.\*

<sup>1</sup> Vide *Marriage Ordinance Cap. 118 s. 15—(2)* (Revised Edition Vol. I page 1180). This section was in force at the date of the decision here reported.

<sup>2</sup> Cap. 151 Revised Edition Vol. II Page 1617.

The Acting Attorney-General, *A. H. Roberts*, for the Commissioner of Stamp Duties.—A charitable corporation must be incorporated primarily for charitable purposes. The County Council is primarily an administrative body. Local Government (Scotland) Act 1929, s. 2.<sup>1</sup>

*C. G. Howell*, C.J. (Acting).—This is an appeal by case stated from the assessment of succession duty made by the Commissioner under the Death and Gift Duties Ordinance 1920 on certain legacies bequeathed by the late Mr. James Harper to various parish councils in Scotland, which have now, by virtue of the local Government (Scotland) Act 1929, been absorbed by the respective County Councils concerned.

There is no doubt that the legacies are for charitable purposes, and the appeal is based upon the contention that, the respective councils being charged with the execution of charitable trusts and being themselves corporations with powers to perform certain charitable functions they are entitled to the exemption, conferred by Schedule B to the Ordinance, upon "A corporation of persons for religious charitable or educational purposes."<sup>2</sup>

In my judgment this contention is unsound: the corporations contemplated by the exemption are corporations either wholly, or at any rate primarily, formed for charitable purposes. A district council is established mainly for purposes of local administration and certainly not to carry into effect charitable purposes except fortuitously as in the present case. Any such trusteeships are quite collateral to the functions of a district council and do not to my mind in any way affect the nature of the corporation. It was admitted frankly by *Mr. Grahame* in argument that if a "Charitable Corporation" was indistinguishable from a "corporation of persons for charitable purposes" his argument failed. I have been unable to find any distinction.

Although it is not necessary to go further for the decision of this case, I should have been prepared to decide that the exemption in the Schedule refers only to charitable corporations incorporated as such either by charter, statute, under the Companies Ordinance, or under the Imperial Statute of 1872<sup>3</sup> for the incorporation of charitable trusts. In the words of *Halsbury*, Vol. IV, s. 554, "A charitable corporation is one whose corporate purpose is charitable".

In my judgment the Commissioner was right in assessing these legacies for succession duty, and the answer to the question set out at the end of paragraph 6 of the case is in the negative.

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<sup>1</sup> 19 and 20 Geo. 5 c. 25.

<sup>2</sup> *Vide now the Second Schedule to Cap. 151 (Revised Edition Vol. II Page 1649.)*

<sup>3</sup> *Charity Trustees Incorporation Act, 1872, 35 and 36 Vict. c. 24. ..*