BOMBAY HIGH COURT

D.V. Arur

Vs

Commissioner of Income-Tax

(Leonard Stone, Kt., C.J Kania, J.)

23.03.1945

JUDGMENT

Leonard Stone, Kt., C.J.

1. This is a reference under Section 66(1) of the Indian Income-tax Act, 1922. The assessment year is the year 1939-40 in respect of the accounting year, which in this case is the year ending May 31, 1938.

2. The asseasee is a trustee, and the amount in dispute is the sum of Rs. 1,263, which is the income for the accounting year of a trust fund created by a settlement dated February 10, 1924.The questions referred to us are as follows:

(1) Whether the income of the trust fund called Shri Kailaje Umamaheshwar Vidya Nidhi is income derived from property held under trust or other legal obligation wholly for charitable purposes within the meaning of Section 4(3)(i) of the Indian Income-tax Act?

(2) Whether the income of the trust is taxable at the maximum rate under the first proviso to Section 41(1) of the Act?

3. The answer to the first question must depend solely on whether the trusts or the settlement are wholly for charitable purposes within the meaning of Section 4(3)(i) of the Indian Income-tax Act. That sub-section is as follows:

(3)Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them:

(i) Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such

purposes, the income applied, or finally set apart for application, thereto.At the end of all the clauses of Sub-section 4(3) there is the following definition of "charitable purpose":In this sub-section 'charitable purpose' includes relief of the poor, education, medical. relief and the advancement of any other object of general public utility, but nothing contained in Clause (i), Clause (ia) or Clause (ii) shall operate to exempt from the provisions of this Act that part of the income of a private religious trust which does not enure for the benefit of the public.It is to be observed that this definition is not an exclusive or exhaustive one Such as is to be found in many of the definitions contained in Section 2 of the Act where the word "means" is used instead of the word "includes".

4. The trust deed of February 10, 1924, is a settlement by two Brahmins of the one part and one of them and four other persons (thereinafter called 'the trustees') of the other part. It recites that the donors have given a donation of a sum of Indian Government Promissory Stock Note of Rs. 36,000, the interest of which is to be appropriated to awarding scholarships in accordance with Clause (12)(a) of the scheme written hereunder in para. 6 and a sum of Rs. 650 in cash to be utilised as directed in Clause (12)(b) of the said scheme. The operative part of the deed directs that the trustees are to hold the trust fund upon trust to administer and control the same and apply and devote the nett annual income of the said Vidya Nidhi in and towards the objects and purposes described and mentioned in and in accordance with the scheme hereunder written in para. 6, which scheme is to be considered as part and parcel of the deed. The first ten clauses and Clauses 16 and 17 of para. 6 deal with administrative matters. Clauses (11), (12), (13), (14), (15), (18), (190, (20) and (21) are as follows:

(11)(a) The interest accrued on the 36,000 rupees in G.P. Stock Notes shall be utilised in awarding scholarships as shown in Clause (12) below to young men or women who are descendants of the Arurkar family (which expression shall mean descendants in the male line of Devapana Arur the founder of Shri Umamaheshwar Temple of Kailaje near Karkal, in South Kanara District...provided always they bear good moral character and are otherwise deserving of encouragement. Provided further that in the cage of females the Eligibility shall extend to only 3 degrees through male or female, computed from Donor No. 1 (Venkatrao Narayan Arur).

(b) In case the interest accrued on the Nidhi Fund is not exhausted by award of scholarships to deserving youths in the Arurkar family, as indicated in (a) above, the surplus if any up to 50 p.c. of it at the discretion of the trustees may be devoted to award) scholarships to deserving applicants in the Saraswat community (owing allegiance to Shri Chitrapur Mutt) the balance if any being added on to the corpus of the Nidhi.

(12)(a) The interest on the Fund shall be distributed in scholarships in the following manner :

i. 5 scholarships of the value of Rs. 5 each a month;

ii. 3 scholarships of the value of Rs. 10 each a month;

iii. 1 scholarship of the value of Rs. 20 a month and iv. 1 scholarship of the value of Rs. 25 a month.Provided, however, the trustees are empowered where necessary to accumulate two or more scholarships in favour of one scholar or to split the existing number of scholarships into a greater number or to alter the amount or the number of scholarships in their discretion, after ascertaining the needs of the students.

(b) The cash amount of Rs. 650 mentioned in para. 2 above shall be utilised for the award of the scholarships duly every month until the realisation of the half yearly interest on Rs. 36,000 in G.P. Stock Note and it shall be recouped as Soon as the interest is realised and it shall be utilised for a similar purpose whenever necessary.

(13) The scholarships contemplated are to be defrayed from the interest accruing on the Fund of Rs. 36,000. If after allowing the scholarships any surplus interest has accumulated, the trustees out of such accumulation may where necessary and expedient make reasonable advance of money to a scholar of the Arurkar family to start in life. The scholarships and the advance of money to start in life should be within the amount of interest accrued on the Fund of Rs. 36,000 without in any way affecting its corpus.

(14) In the case of scholarships to youths, who are outside the Arurkar family as defined above in (11)(a) the trustees have power in fit cases to adopt measures to ensure return by the recipients of money spent on them from the Nidhi And in the case of advance of money to youths to start in life as contemplated in Clause (13) above, the trustees shall take sufficient guarantee to secure the return of the amount. For these purposes suitable agreements in writing may be taken from such recipients or their guardians so as to ensure repayment of the money with or without interest and in such time and manner as the trustees deem expedient. The money so recovered shall be added to the corpus of the Nidhi.

(15) The fund of the endowment is intended for help in education in Arts, Science, Indus-tried, technical subjects like Engineering, Commerce, Agriculture, Medicine, fine arts like drawing, painting, photography, and any vocational studies, all which will be useful to the scholars to earn a decent livelihood. The trustees shall have the power of selecting the subject of study and the institution for it in particular cases, regard being had to the aptitude and constitution of the scholar. The age limit of the scholar is left to the discretion of the trustees.

(18) The trustees shall give due consideration to poverty, moral character, intelligence, aptitude and the physical fitness and constitution of the applicant.

(19) In case of competition for scholarships among two or more students, those who are nearer in blood to the Donors shall have preference over those who are more remote.

(20) The scholarships will ordinarily be tenable in each case for one year only, but the trustees shall have power to continue it to the same recipient if he shows sufficient progress or in the opinion of the trustees deserves further encouragement.

(21) The trustees shall have power at all times to discontinue the payment of any scholarships in cases of moral delinquency or deviation from the Sanatan Dharma on the part of the recipient, the decision of trustees being final in the matter.

5. No question arises with regard to this trust being for a religious purpose, but it is submitted on behalf of the assessee that the trust is educational in character and, therefore, is of a charitable purpose within the meaning of Sub-section A(3)(i) of the Act. Whilst reliance was placed upon the fact that by Sub-clause (ii)(b) of para. 6 of the trust deed it is permissible to award scholarships outside the Arurkar family, provided that the applicants are deserving and in the Saraswat community, it is not suggested that any part of the Rs. 1,263 was so applied. Looking at the scheme of the trust deed as a whole, it is clear that the dominant abject is the provision of scholarships for young members of the Arurkar family, in the case of females limited to three degrees of relationship from the donor. The power to use surplus income for scholarships for deserving members of the Saraswat community and the power to make advances to enable a start in life to be made by a scholar are subsidiary objects. In my opinion the trust though educational in character is of a private and limited scope.

6. Great reliance was placed by Sir Jamshedji Kanga on behalf of the assessee on the English case of In re Compton : Powell v. Compton (1944) 60 T. L.R. 485, which, if the laws of India and England were the same, it would be difficult to distinguish from the present case. In that case there was a bequest in the will of the testator for the benefit of the children of three designated persons in the following terms:for the education of C and P and M children, but C and P children are to have the preference as scholarships for the time thought best by the trustees not over the age of 26 years. It is not to be used as a pension or income for any one and is to be held as scholarships at the pleasure of the trustees. It is to be used to fit the children as servants) of God serving the nation not as students for research of any kind.

7. There were living twenty-eight persons who could qualify as members of the class in that case and Cohen J. felt himself bound by the earlier English cases to which he referred and came to the conclusion that he had no other course than to hold that the trusts in that case were charitable. Since this case was argued before us and we reserved our judgment upon it, In re Compton : Powell v. Compton has been taken to the Court of Appeal in England where it was overruled

[1945] 1 Ch. 123. No report of the decision of the Court of Appeal has yet reached this country. However, as Mr. Setalvad on behalf of the Crown has pointed out, the conception of charitable purposes in England and in India is not necessarily the same. In England a great array of judicial decisions have invested the Statute of Elizabeth with an imposing mantle of judge made law, into which is woven the legal conception of charity. In India the popular notion of a charitable purpose is almost unlimited in its scope. But during the last eighty years numerous statutes concerning taxation, civil procedure, transfer of property and charitable endowments have laid down a legal conception of charitable purposes so far as those statutes are concerned, which considerably1 curtails the popular ideology of what is charitable.

8. The earliest statute appears to be the Civil Procedure Code of 1857. In the Code of 1877 the expression used is a trust for public, charitable purposes; in the Transfer of Property Act of 1882 the restrictions imposed by certain sections of that Act "shall not apply to property transferred for the benefit of the public, for the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind"; in the Income-tax Act of 1886 by Sub-section 5(1) "nothing in Section 4 shall render liable to tax...any income derived from property solely employed for religious or public charitable purposes"; in the Charitable Endowments Act of 1890 Section 2 " charitable purpose "includes" relief of the poor, education, medical relief and the advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching and worship"; in the Civil Procedure Code of 1908, Section 92, which, concerns the commencement of proceedings for an alleged breach of express or constructive trusts "created for public purposes of a charitable or religious nature"; in the Income-tax Act of 1918, Section 3(2) provides that the Act shall not apply to certain classes of income including income derived from property held under trust or other legal obligation wholly for religious or charitable purposes and in that section "charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility. The preamble to the Charitable and Religious Trusts Act of 1920 refers to trusts "created for public purposes of a charitable or religious nature." In the Income-tax Act of 1922 the definition of "charitable purpose" contained in Section 4(3)(ix) is the same as that in the 1939 Act quoted above without the qualification that nothing contained in Clause (i), Clause (1)(a) and Clause (ii) shall operate to exempt from the provisions of this Act that part of the income of a private religious trust which does not enure for the benefit of the public.

9. In my opinion, looking at the definitions in the various Acts, a charitable purpose which is not of a religious character must contain the element of benefiting the public. So that a trust, the object and scope of which is limited to the education of the members of a family, would not come within the definition of a charitable purpose contained in the Income-tax Act either as it stood in 1922 or as amended in 1939.

10. What we have to do is to construe the statute, no doubt the public nature of the trust can be satisfied by benefit conferred on a substantial section of the community. In Trustees of *Tribune Press v. Commissioner of Income-tax, Punjab*[1] a person who owned a press and a newspaper created a trust by his will in respect thereof "to maintain the said press and newspaper in an efficient condition, and to keep up the liberal policy of the said newspaper, devoting the surplus income of the said press and newspaper after defraying all current expenses in improving the said newspaper and placing it on a footing of permanency." Delivering the judgment of the Judicial Committee Sir George Rankin said (p.1159):But their Lordships, having before them material which shows the character of the newspaper as it was in fact conducted in the testator's lifetime, have arrived at the conclusion that questions of politics and legislation were discussed only as many other matters were in this paper discussed, and that it is not made out that a political purpose was the dominant purpose of the trust.

They think that the object of the paper may fairly be described as ' the object of supplying the Province with an organ of educated public opinion' and that it should prima facie be held to be an object of general public utility.

11. That case decides that something which is for the benefit of the community of a Province is a matter of public utility. Public utility must always be a matter of degree, so that circumstances must be examined to ascertain whether the section or class of the community to be benefited can be said to be public as opposed to being private. In my opinion a trust for the benefit of the members of a family or for the descendants of a named individual imports a conception or notion of something which is private and not something which is public. This view is supported by various cases in the Indian High Courts and in particular by Commr. of Inc.-tax v. Jamal Mahamad Sahib , Mercantile Bank of India (Agency) Ltd., In re and the Commr. of Inc.-tax, Madras v. Aga Abbas Ali Shirazi . Accordingly, in my opinion, the first question should be answered in the negative.

12. With regard to the second question I have had the advantage of reading the judgment about to be delivered by my learned brother Kania with which I entirely agree and there is nothing I desire to add with regard to the second question beyond what is stated by him. I agree that the question should be answered in the affirmative.

Kania J.

13. The first question submitted by the Tribunal for the Court's opinion involves the true construction of the expression "charitable objects" within the meaning of Section 4(3)(i) of the Indian Income-tax Act and the decision whether the settlement in question results in vesting the trust property in the trustees wholly for charitable objects.

14. In respect of the first point it has been argued on behalf of the assessee that relief of the poor, education and medical relief are by themselves objects of charity, and the words "advancement of any other object of general public utility" denote a class by itself. The contention is that for the relief of poor, education and medical relief the element of public benefit is not required, because those objects, even when limited to a small class or even a family, are recognised as conducive to? general public benefit. In this connection counsel strongly relied on In re Compton : *Powell v. Compton*[2], In that case Cohen J. had occasion to consider a bequest in the following terms:

...the money which was not brought into the family by my mother is to be invested...under a trust for ever...for the education of C and P and M children, but C and P children are to have the preference as scholarships for the time thought best by the trustees not over the age of 26 years. It is not to be used as a pension or income for any one and is to be held as scholarships at the pleasure of the trustees. It is to be used to fit the children as servants of God serving the nation not as students for research of any kind....

15. The testatrix defined C, P and M children as the lawful descendants of three specified persons. Of these three persons there were living at the date of the summons twenty eight lawful descendants, all of whom were not yet twenty-six years old. The learned Judge at first notice *White v. White*[3] The *Attorney-General v. Price*[4] and *Attorney-General v. Duke of Northumberland*[5] In the first two cases a bequest for the benefit of the testator's poor kinsmen and kinswomen and among their off-spring in perpetuity was upheld. In the last case the bequest was considered to contain a general charitable intent and preference was given to the poor relations of the settlor. The next point considered by the learned Judge was whether there was a difference between cases of poverty and cases of education. Relying on Attorney-General v. Sidney Sussex College (1869) 4 Ch. App. 722 in which the bequest of lands to the college for the only use, education in piety and learning of ten descendants of the brothers and sisters of the testator and of his two wives and in default of such to their poor kindred, was upheld as a charitable bequest, he held that the same principle applied to education also. From the judgment of Cohen J. it is clear (as he in terms stated) that but for the current of authorities which compelled him to hold that the trust was a valid charitable trust he would have held otherwise.

16. On the other side it is contended that on the construction of the word "charity" English decisions are of no use here. As pointed out by the Privy Council in All India *Spinners Assn. v. Commissrs. of Inc.-tax*[6] the meaning of the word "charity" in England has developed according to the decisions of English Courts and there is no statute which defines that word. It was pointed out that where, as in India, there exist a statute which in terms defines the word "charity", it is improper to attempt to go through a series of English cases to find but the meaning of the word "charity". As regards the definition of "charity"' contained in the judgment of Lord Macnaughten

in Commissioners for special purposes of the *Income-tax v. John Fredrick Pern-sel*[7] it was pointed out that, in India, the last heading, instead of being "for purposes beneficial to the community", was (as found in Section 4(3)) "for the advancement of any other object of general public utility ", and the inclusion of the word "public" was of importance. In that case the Court held that the object of the settlement was to benefit the poor agriculturists. It was charitable both under the heading "Relief of poor" and as the advancement of an object of general public utility. Having regard to those observations it was urged that the Court should not consider the halting decision of Cohen J. in In re Compton as binding. It was argued that 'on a plain construction of the definition of' charitable objects' given in the Indian Income-tax Act the Court should construe the words "relief of the poor, education and medical relief" as relating also to a section of the public at least, because in the last clause the words are " any other object of general public utility". It was contended that the previous words should be construed ejusdern generis. It had to be conceded that although the words "general public" prima facie would mean the public at large and not merely a section, in view of the decision of the Privy Council in Trustees of Tribune Press v. Commissioner of Income-tax, Punjab if the object of the charity was to benefit a fairly large number of public it was sufficient. In that case the spreading of news amongst the English-reading public of the Punjab was considered an object falling under the class "for the advancement of any other object of general public utility". It was further pointed out that in Commr. of Inc.-tax v. Jamal Mohamad Sahib a full bench of the Madras High Court had held that a settlement for the poor relations of the settlor did not fall under Section 4(3)(i) of the Indian Income-tax Act and that case was followed by the same Court in Commr. of Inc.-tax v. Aga Abbas Ali Shirazi . In the same way the Calcutta High Court in Mercantile Bank of India (Agency) Ltd. In re held that relief of poor must be also of the public or a specific section of it, and if it was limited to a family, it was not for a charitable object within the meaning of Section 4(3)(i). Counsel further relied on Section 14 of the Transfer of Property Act which contained the rule against perpetuity. The exception is provided in respect of charity in Section 18 in these terms:The restrictions in Section 14.shall not apply in the case of a transfer of property for the benefit of the public in the advancement of general knowledge, commerce, health, safety or any other object beneficial to mankind.

17. It was contended that having regard to this provision in the Transfer of Property Act unless the settlement was for the benefit of mankind and was covered by the words of Section 18, the transfer would be bad in law and no question could arise under the Income-tax Act in respect of the income of such settlement beyond the period prescribed by Section 14 of the Transfer of Property Act.

18. In my opinion the arguments advanced on behalf of the Commissioner are sound. In England there is no definition of "charity" and the meaning of that word, attempted to be extended by

judicial decisions, is not helpful, when we are considering specific sections of the Income-tax Act. The observations of Lord Wright in The All India Spinners Assn.'s case must be accepted as final in that connection. I should point out that the definition of charitable objects in the Income-tax Act is an inclusive definition and therefore cannot be considered an exhaustive one. The Privy Council have considered the word "public" as important in that definition. The sections of the Transfer of Property Act are also material to be considered, because when the Legislature thought of saving transfer of property in perpetuity it saved only such transfers whose object was the benefit of public. Private settlements for the relief of poor relations, or for the education and medical relief of members of the family, would therefore be excluded, under the Transfer of Property Act, from the class of charitable settlements. The two Madras and the Calcutta case mentioned above also show that Indian High Courts have construed the words 'charitable objects' as limited to settlements made for the benefit of a section of the public only. They have excluded settlements made for poor relations of the family from the class of settlements saved from taxation under the Indian Income-tax Act. I agree with that view on the principle that in the construction of an all India Act, so far as possible, there should be uniformity, and unless the Court was clearly of a different view an interpretation by one Court should be followed by others. I think we should also accept the construction put by the other Courts on those words in this case. The decision of Cohen J. is not binding on this Court and the learned Judge himself arrived at a conclusion against his own personal convictions, because he felt bound by the authorities in England. That decision has now been reversed by the Court of Appeal. In my opinion, therefore, to exempt the income from taxation, on the true construction of the settlement in question, the Court must find that the object of education was for a section of the public at least. The settlement may claim exemption in that case, even though the members of the family may be given preference in the selection of scholars.

19. In respect of the question of construction of the trust deed the relevant portions are set out in the judgment of the learned Chief Justice. It was argued on behalf of the assessee that the name itself indicates that it is an education fund, not limited to the members of the family. That argument cannot help in the true construction of the deed of settlement because the Court has to find whether the property is held under trust wholly for charitable purposes. Counsel for the assessee relied on Clause 2 to show that in the recital it was stated that interest of the fund was to be appropriated in awarding the scholarships mentioned in Clause 12(a) of the scheme (written hereunder in para. 6) and that under Clause 12 there was no restriction to give the scholarships only to members of the family. While Clause 12 mentions how many and what amounts were to be given, it does not indicate to whom the same were to be given. This argument therefore does not help the assessee. The relevant clause is the fifth clause where it is expressly stated that the amount was transferred to the trustees "upon trust to collect the interest of such investments upon

trust to apply and devote the net collections in the manner set out in Clause 6." Lower down in the same clause it is stated that the trustees stood possessed of the fund upon trust to administer and control the same and apply and devote the net annual income in and towards the objects and purposes described in Clause 6. It is therefore necessary to turn to Clause 6 to find out the objects for which the income was to be spent. It is clear that in the scheme, Clause 11 first prescribes the obligation on the trustees to award scholarships as shown in Clause 12 to any men or women who are descendants of the Arurkar family; of which a genealogical tree was annexed as No. 2 to the scheme. That is an absolute obligation. It is true that the eligible persons must have good moral character and should otherwise be deserving of encouragement But these are general words of qualifications. Sub-clause (b) is a matter of discretion left to the trustees and contains no1 obligation on them to apply the fifty per cent. of the surplus for giving scholarships to applicants of Saraswat community. If the trustees do not act under this clause, the balance of the income must go to augment the fund of the endowment.

20. Counsel for the assessee strongly relied on Clause 15 for the contention that the fund of the endowment was intended for the education of the public. At one time I was impressed by the words of that clause considerably. A close scrutiny, however, shows that even there it was provided that the education was to be in an institution which will be useful to a scholar to earn a decent livelihood. The repeated use of the word "scholar" three times in that clause indicates that the scholar was to be one defined in the previous Clause 11, and I am unable to read that word as importing a scholar from the public at large, or as referring to a scholar of the Saraswat Hindu community only. It is further provided in Clause (19) that in case of competition for scholarships between two or more students those who were nearer in blood to the donors should have preference over those more remote. Reading the scheme as a Whole it seems to me that this settlement was for awarding scholarships to the members of the Arurkar family, and to emphasize this object the genealogical tree was annexed to the scheme. I do not think the number of those eligible at the date of the settlement matters, because the initial object is for the benefit of the descendants of named persons, and under the circumstances the idea of benefiting : a section of the public in any way is excluded. It has been recognised that the line dividing public and private settlements is difficult to define, but on a true construction of this deed it seems clear that the settlement was for the education of the members of the Arurkar family of which Devappaya was the founder. On the true construction of the words "charitable objects", therefore, this settlement does not fall within the class of excepted settlements under the Income-tax Act.

21. Moreover the words of Section 4(3)(i) require that the settlement should be wholly for charitable purposes. Clause 13 of the scheme allows the trustees, out of the accumulations of interest, where necessary and expedient, to make a reasonable advance of money to a scholar of Arurkar family to start in life. Although under Clause 14 it is provided that sufficient guarantee

should be taken to secure the return of the amount, it is clear that Clause 13 provides an object which is clearly not a charitable one. To start a person in life cannot be considered a charitable object within the meaning of the Income-tax Act. That loan again is limited to scholars of the Arurkar family. It is therefore clear that as this is one of the objects of the settlement mentioned in the scheme, the property is not held by the trustees for wholly charitable objects. Under the circumstances the income cannot be exempted under Section 4(3) of the Act. I therefore agree that the first question should be answered in the negative.

22. The second question relates to the maximum tax levied on the income in the hands of the trustees under Section 41(1) of the Act. The total income of the fund is Rs. 1,263. As the same is below the minimum limit, ordinarily, it would have been exempt from tax. Counsel on behalf of the assessee contended that if this trust deed was void the trustees should be assessed as individuals in their own right and they cannot be assessed at the highest rate under Section 41, Sub-section (1). That argument cannot be accepted because Section 14 of the Transfer of Property Act does not invalidate the settlement as a private settlement for the life of the beneficiaries in existence at the date of the transfer. Those beneficiaries are determined but having regard to the words used in Clause (12) of the scheme it cannot be stated that the beneficiaries have any specified interest. The trustees are given power to select out of those eligible persons scholars to whom they would give scholarships, and the amounts of the scholarships are also left, under Clause (12), to their discretion. They are at liberty to reduce the amount or group together several scholarships and make it into one scholarship for an individual scholar. Under the circumstances the case clearly falls under Section 41(1). It was argued that on the exercise of discretion by the trustees the names and shares of the beneficiaries will get determined. That however is a wrong approach, because the question is not about the position arising after the trustees have exercised their discretion, but whether on a perusal of the trust deed the beneficiaries and their individual shares can be determined. I therefore thinkthat the Tribunal was right in its conclusion and the answer to the second question should be in the affirmative.

The assessees must pay the costs of the reference.

Cases Referred.

1(1929) 41 Bom. L.R. 1150 : S.C.L.R. 66 I.A. 241
2(1944) 60 I.T.R. 485
3(1810) 17 Ves. 371
4(1802) 7 Ves 423
5(1877) 7 Ch. D. 745
6(1944) 47 Bom. L.R. 233
7[1891] A.C. 531