Privy Council Appeal No.26 of 1927.

The Universal Negro Improvement Association, Inc., and others - Appellants

v.

Ann Rebecca Morter ... ... - Respondent

from

THE SUPREME COURT OF BRITISH HONDURAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, delivered the 24th FEBRUARY, 1928.

Present at the Hearing:

VISCOUNT HALDANE.
LORD SHAW.
LORD CARSON.

(Delivered by Viscount Haldane)

In this case the laarned Chief Justice of British Honduras who tried it had a difficult task, arising out of somewhat obscure materials. But their Lordships think that his judgment ought not to stand.

The first appellant is a corporation that is a beneficiary under the will, dated the 15th February, 1924, of one I.E.Morter, a planter at Belize in British Honduras, who died on tho 7th April in the same year. The second appellant represent other societies, also interested as beneficiaries, who were made defendants (along with the first appellant). The respondent, as plaintiff, commenced an action against the executors and trustees of tho will to set it aside. She was the widow of the testator and claimed administration on the ground of intestacy, and, alternatively, a declaration that certain of the devises and bequests in it were void. The executors and trustees have not appeared in this appeal.

The testator, by his will, devised and bequeathed the residue of his real and personal estate to the Parent Body of the

Universal Negro Improvement Association, for the African Redemption Fund. It is not in dispute that if this be a valid gift the first appellant may be taken as representing the Parent Body of the Universal Negro Improvement Association named in the will, a conclusion which is in accordance with the finding of the learned Judge who tried the case. The point was taken for the respondent that the description of this beneficiary was so vague as to make the gift void for uncertainty. Their Lordships think that Chief Justice Sisnett was right in holding on this point that if the gift was a valid one the beneficiary had been identified as representing the first appellant, and that there is a direct gift to it for the Redemption Fund without the constitution of a formal trust. The real question of difficulty is whether the objects of the appellant Association were such as to render the gift to it in the will void for illegality.

In considering this question it is necessary to look at the constitution of the first appellant. This was a body incorporated in the State of New York on the 17th June, 1918. The purposes expressed in the certificate of incorporation were to promote and practise the principles of benevolence, and for the protection and social intercourse of its members, and for their mental and physical culture and development, and to extend a friendly and constructive hand to the negroes of the United States. So far the purposes were prima facie free from illegality. The territory in which its operations were to be principally conducted was that of United States territories and possessions. The principal office was to be at an address in the City of New York.

On the 26th July, 1918, there was also incorporated under the Business Corporation Law of the State of New York a stock corporation for purely business purposes with its principal

office also in the City of New York. It was called the African Communities League, and the stockholders were in the main the same persons as those already incorporated as the Universal Negro Improvement Association. There is nothing in the declared purposes of either of these bodies that is contrary to British law. A branch of the Association and of the League was, on the 15th March, 1920, formed in British Honduras.

There was a printed book which was put in evidence. It is called the "Constitution and Book of Laws" made for the government of the Universal Negro Improvement Association, Inc.,and African Communities League, Inc.,of the World, and it has been repeatedly re-issued since 1918. It defines these bodies as founded by persons desiring to work for the general uplift of the Negro peoples of the world. There was also a voluntary society called the Universal Negro Improvement Association and African Communities League, which the learned Chief Justice found to be the body intended by the testator under the description of the Parent Body of the Universal Negro Improvement Association. This body consisted of much the same persons as those incorporated, and was also subject to the Constitution Book. The book, at the end of Article 13, purports to enable the raising of a fund from all negroes for the purpose of the redemption of Africa. The purpose of the fund was to be to create a working capital for organisation, and to advance the cause for the building up of Africa. There was to be a Potentate and Supreme Commissioner of negro blood who was constitutionally to control all the affairs of the Association and League, and of all other societies. He was to form an Executive Council to assist him in his administration. There were to be divisions, and each when created was to elect its own officers, with the approval of the President-General.

So far all that was provided was harmless, but later on in the book were contained Rules and Regulations for Universal African Legions of the Association and the League. These laid down that there should be an auxiliary body formed out of the members, to be designated the Universal African Legions. They were to prepare men for service by teaching them military skill and discipline, and by registering them according to the various trades in which they had been trained. The men, with their officers, were to be organised as an army and to be under military discipline, and to obey the Potentate, and so behave as to secure that "God's divine purpose" might be accomplished in the freedom of all mankind from slavery and despoliation, and to bring about the success of the cause of the redemption of Africa.

One Marcus Garvey, who had been connected with the first appellant from the beginning, had become its President-General, and had been elected and styled "Provisional President of Africa". He had made speeches in New York, and had published them in a book. "We are not," he appears to have said, "engaged in domestic politics, in church building, or in social uplift work, but we are engaged in nation building." What they sought, he went on, was independence of government, with one President in Africa. They would fight for this, as black American citizens, as black British subjects, as black French, or Italian, or Spanish citizens, in response to the cry of their fathers for the redemption of their Motherland, Africa. They might yet run out, among others General Smuts, as other rulers had been expelled. The black man's back was to the wall, and he was going to show the teeth of the tiger. About this four hundred million negroes were determined.

The purposes so expressed were, the learned Chief Justice found, to be the principal and ultimate object of the fund,

and it may well be that Mr.Marcus Garvey, who was apparently of negro descent and an impassioned person, when he spoke so expressed the views of many other members of the Association besides himself. But the objects laid down in the speeches do not appear to be set out in the constitution of the Association. Had they been so, it may well be doubtful whether the authorities of the State of New York would have permitted the incorporation. Moreover,it is significant that although the Association had its head office in New York City, where its domicile must be taken to be, and appears to have courted publicity, no step had been taken by the State authorities to interfere with it. But the police appear to have been watchful, for it seems that Marcus Garvey personally was, indeed,prosecuted and convicted for using the United States mails for obtaining money by false pretences from the members of the negro race. But the Association was not interfered with by the American Government, notwithstanding the statements made by Garvey which have been quoted. The Government may have taken the view that these statements were not to be regarded seriously, and were of no importance. The authorities appear to have incorporated the bodies concerned, and then to have taken no step towards treating them as having been originally or having become illegal on account of their purposes.

Their Lordships desire to guard themselves from its being supposed that they in any way question the principle that a provision made in a will or contract can stand if under it a fund is given for purposes some of which are illegal, with no provision for separating these from other purposes which are valid, or for apportionment. But it is not every use of words that is to be taken seriously. Here it is important to observe that the authorities of the place where the Association had its

treated the language used in the published book on Garvey's speeches as of a serious character, such as to warrant proceedings on the ground of illegality. The bodies concerned, and particularly those incorporated, had certain purposes which were, so far as they went, charitable and legal. It was only in virtue of the Constitution and Book of Laws and in the speeches of President Garvey that these objects were extended to matters which might be objectionable in the eye of the law. Whether such illegally expressed utterances were to be taken as seriously intended or as more than exuberant oratory of a kind which is not uncommon in public places is, in their Lordships' opinion, a question not only for the laws of the State of New York, but, of course, also for those of every country in which consideration has to be given to the true intent and meaning of a bequest which is to receive effect within its territory. No action within the New York State is no doubt a circumstance to be taken into consideration, and their Lordships see no more occasion for attaching a seditious meaning to high-flown language than did the American authorities.

It is to be observed, further, that at the trial of the action no evidence of New York law was tendered to prove what in a British Court was only an allegation of fact - the illegality of the objects of the New York Associations.

Their Lordships think that in the absence of such evidence the learned Chief Justice Sisnett went too far when he held that it had been proved that the Association and the African Redemption Fund had been shown to be bodies incorporated for illegal objects. It is not improbable that the course taken by the American authorities, with whom the decision of this question primarily rested, was the wise one. They simply took no notice of the Association, although it was performing its charitable functions

at least publicly and was paying large salaries to its officers. Apparently they did not treat the belligerent ideas as so seriously or definitely put forward that the law would take cognizance of them as threats to commit crime. If that be right, this fund ought not to be treated as one which a foreign Court can regard as unlawful.

Upon this footing the other point made at the Bar does not arise. It was said for the respondent that a new trial cannot be obtained unless a motion to that effect is made within a limited time in the Court below. Their Lordships do not think that this is an application for a new trial within the Rules of Procedure of the Supreme Court of British Honduras which contain the provision. The whole materials are before them, and the question is one of law simply, appearing on the face of the judgment.

They will humbly advise His Majesty that the order of the Court below should be discharged, and that the action should be dismissed. The learned Judge directed, after careful consideration, that the costs of the plaintiff and of the executors as between solicitor and client should be allowed out of the estate, and that similarly the defendant Association should be allowed half of their costs out of the estate, again as between solicitor and client. It was the looseness of the testator's directions which gave rise to the litigation, and their Lordships think that this order was right and should stand excepting that the defendant Association and the other appellants should now have the whole of their costs out of the estate. As regards the costs of this appeal, all the parties who have appeared should have their costs out of the estate, but only as between party and party.