

The following questions were submitted to the Court: Is the legacy to the British Union for the Abolition of Vivisection subject to the succession duty payable to the province of Ontario? (2) If subject to succession duty, does the estate of the deceased bear the same or is it to be deducted from the amount of the legacy to the said British Union?

D. T. Symons, K.C., for the executors.

T. P. Galt, K.C., for the British Union for the Abolition of Vivisection.

J. R. Cartwright, K.C., for the Treasurer of Ontario.

C. A. Moss, for the residuary legatee and certain specific legatees.

HON. MR. JUSTICE MIDDLETON:—This society is a charity in the technical sense in which that term is used at law. *Re Foveaux, Cross v. London Anti-Vivisection Society*, [1895] 2 Chy. 501.

The first question is whether the legacy is liable to succession duty. The statute 9 Edw. VII., ch. 12, sec. 6, subsec. 2, provides that "no duty shall be leviable on property devised or bequeathed for religious, charitable, or educational purposes, to be carried out in Ontario or by a corporation or person resident in Ontario."

In order that the legacy to this British corporation should be free from duty, it is essential that the charitable purpose should be one "to be carried out in Ontario;" that is, one which must, according to the terms of the devise, be carried out in Ontario; and it is not sufficient that the money might without breach of trust be expended within Ontario.

The reason for this exception is easily found, when the history of the statute is borne in mind. By the preamble to the original Act, it is recited that "the province expends very large sums annually for asylums for the insane and idiots and institutions for the blind and deaf mutes, and towards the support of hospitals and other charities, and it is expedient to provide a fund for defraying part of this expenditure by a succession duty." It is, therefore quite logical that funds themselves bequeathed for the purpose of charities within the province should be exempt from this form of taxation.

The expression "to be carried out in Ontario," is very similar to the expression found in Consolidated Rule 162, permitting service of process out of Ontario where the action is