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Charities--Trusts--Trust Provision for the Care and Comfort of Dumb Animals (Matter of Hamilton, 270 App. Div. 634 (3d Dep't 1946))

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CHARITIES—TRUSTS—TRUST PROVISION FOR THE CARE AND COMFORT OF DUMB ANIMALS.—Bertha L. Hamilton provided in her will that her homestead property be used "for the purposes of an animal home or hospital," as a trust committee may decide; the remainder of her estate and the income therefrom was to be used "for the care and comfort of such animals." The residuary estate of the testatrix exceeds $400,000 in value. The trust is attacked on the grounds that it is not for a charitable purpose as provided by statute in New York and is therefore void under the rule against perpetuities.

Held, the trust as set up by Bertha Hamilton is for a charitable purpose, since the care of animals is generally beneficial to mankind. *Matter of Hamilton,* 270 App. Div. 634, 63 N. Y. S. (2d) 265 (3d Dep't 1946).

Charitable trusts are exempt from the provisions of the rules against perpetuities.[1] There is one question, then, in this case, namely whether or not the provisions in Bertha Hamilton's will are charitable. In forming its decision, the court used the Restatement of the Law of Trusts as its only authority,[2] being unable to find a precedent in New York. The decision is in accord with the weight of authority, as there have been similar decisions in England[3] and in other jurisdictions of the United States,[4] which have upheld trusts for the care and comfort of animals as charitable. There also have been decisions upholding trusts for the prevention of cruelty to animals[5] as well as trusts which indirectly benefit animals.[6] The text writers have agreed with this trend of decisions in designating as charitable, trusts for the care of animals.[7]

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[1] N. Y. PERSONAL PROPERTY LAW § 12; N. Y. REAL PROPERTY LAW § 113.

[2] RESTATEMENT, TRUSTS § 374. "A trust for the promotion of purposes which are of a character sufficiently beneficial to the community as to justify permitting property to be devoted forever to their accomplishment, is charitable . . .

"Relief of Animals. A trust to prevent or alleviate the suffering of animals is charitable. Thus, a trust for the prevention of cruelty to animals, *or a trust to establish a home for animals, or a trust for the prevention or cure or treatment of diseases or of injuries of animals, is charitable.*" (Emphasis supplied by the court.)

[3] *In re* Wedgwood, (1915) 1 Ch. 113; *In re* Douglas, 25 Ch. D. 472 (1887).

[4] Shannon v. Eno, 120 Conn. 77, 179 Atl. 479 (1935); McCran v. Kay, 93 N. J. Eq. 352, 115 Atl. 649 (1921).

[5] *In re* Forrester's Estate, 86 Colo. 221, 279 Pac. 721 (1929); Minns v. Billings, 183 Mass. 126, 66 N. E. 593 (1903); Woodcock v. Wachovia Bank and Trust Co., 214 N. C. 224, 199 S. E. 20 (1938).

[6] Estate of Coleman, 167 Cal. 212, 138 Pac. 992 (1914); *In re* Estate of Graves, 242 Ill. 23, 89 N. E. 672 (1909).

[7] BOGERT, THE LAW OF TRUSTS AND TRUSTEES (1935) § 379, ". . . that human beings are the real and final beneficiaries of such trusts. It is because these gifts tend to prevent the human degradation which comes from participation in cruelty to animals and from observing suffering among animals . . ."; SCOTT, THE LAW OF TRUSTS (1939) § 374.2, "Today . . . the purpose is recog-

There is one case in New York [8] which is somewhat similar to the case under discussion. The testatrix in that case established a trust for her five dogs. The surrogate, after referring to many previous decisions in other jurisdictions, held it to be invalid, not because animals were the beneficiaries, but because it violated the rule against perpetuities. To be considered charitable, a trust must include an indefinite number of animals and not merely a few specified ones.

Another objection raised was that the provision of the trust might allow money to be used in the creation or maintenance of a haven for wild animals. Probably this objection was based on an English decision which held that a trust to establish a game preserve was not charitable.[9] The court reasoned that a game preserve would benefit wild animals, and since wild animals are not beneficial to mankind, the trust was not charitable. This distinction has been vigorously attacked by the text writers as too narrow.[10] The court in this case dismissed the objection because the surrogate had determined that it was the intention of the testatrix to provide for the care of domestic animals.

Presiding Justice Hill, in dissenting, argued that Section 12 of the Personal Property Law was passed to reestablish the English common law relating to charitable uses and no authority or text dealing with the meaning of the words charitable or benevolent under the common law of England showed that they contemplated a benefaction to other than the *human* group. He further argued that the reasons which sustain the perpetual application of income from invested funds and the use of real property for the relief and aid of the human race do not apply to the benefaction, care and relief of dumb animals.

The court in its result is in harmony with the majority view. However, in its opinion, it seems to have avoided the wealth of authority in other jurisdictions, and the text writers on the subject.

G. P. O.

CRIMINAL LAW — CONSPIRACY — EXTORTION — CONVICTION OF ONE DEFENDANT NOT INCONSISTENT WITH ACQUITTAL OF CO-DEFENDANT.—Appellant and a co-defendant were indicted jointly for extortion and for conspiracy to extort. The alleged taking of money from the proprietor of a garage by threats, was pleaded as the ex-

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nized as one in which the community has an interest" (*i.e.*, in seeing that animals do not suffer).

[8] Matter of Howells, 145 Misc. 557, 260 N. Y. Supp. 598 (Surr. Ct. 1932).

[9] *In re* Grove-Grady (1929) 1 Ch. 557.

[10] BOGERT, THE LAW OF TRUSTS AND TRUSTEES (1935) § 379; SCOTT, THE LAW OF TRUSTS (1939) § 374.2; *see* More Game Birds in America, Inc. v. Boettger, 125 N. J. L. 97, 14 A. (2d) 778 (1940).