CHARITABLE GIFTS.

In his dissenting judgment in *Chichester Diocesan Fund and Board of Finance (Incorp.) v. Simpson*[1], Lord Wright when lamenting the absence of any single guiding principle as to what is and what is not a charitable gift, said he was convinced " that the time has come when modern minds imbued with modern ideas should attempt to achieve a clear, workable, and comprehensive definition of what is meant by charitable and its cognate terms, such as benevolent, philanthropic, and the like. That is a task for the legislature."

The necessity for legislation of the kind indicated is illustrated by the recent unanimous decision of the House of Lords in *Williams' Trusts v. Inland Revenue Commissioners.*[2] The question raised was whether under a trust deed executed by Sir Howell Jones Williams as settlor, certain properties were vested in the trustees for charitable purposes within the meaning of the Income Tax Act, 1918, which exempted from taxation the rents and profits of property so vested so far as such rents and profits were applied to charitable purposes only. There was a further question whether the rents and profits received by the trustees were applied by them to charitable purposes only.

The trustees were to hold the settled properties for the general " purpose of establishing and maintaining an institute and meeting place in London to be known as 'The London Welsh Association' . . . for the benefit of Welsh people resident in or near or visiting London with a view to creating a centre in London for promoting the moral social spiritual and educational welfare of Welsh people and fostering the study of the Welsh language and of Welsh history literature music and art." Certain particular purposes for which the properties could be used were set out in the deed as illustrations of the settlor's general intention : e.g. (*a*) for providing a meeting place with social amenities for Welsh people ; (*b*) for meetings concerts and lectures in relation to subjects connected with the Welsh language ; (*c*) for educational purposes connected with Welsh subjects ; (*d*) as a hostel for Welsh people.

Authority was given to the trustees to apply any rents and profits arising from the settled properties to the cost of carrying on the institute. There was an express prohibition of the use of the institute for the purposes of any political party.

The property concerned was in London and consisted of two blocks of buildings, the first block was adapted for use as an institute in accordance with the trusts of the deed, but the second block was let out to tenants. The trustees claimed that the trust was established for charitable purposes and that in applying the rents of the block of buildings which was let to the purposes of the Association they had applied them to charitable purposes only and that they were consequently entitled to exemption from income tax in respect of those rents.

According to the judgment of Lord Simonds, the claim of the trustees that the property was vested in them for charitable purposes was based on three main contentions,

1. [1944] A.C., at 353.
2. [1947] 1 All E.R. 513.

(*a*) that the dominant purpose of the trust was the fostering of Welsh culture which was a purpose beneficial to the community composed of the people of the United Kingdom ;

(*b*) that the dominant purpose was beneficial to the community composed of the people of Wales which was an integral part of the United Kingdom and in itself constituted a political body settled in a particular territorial area ; and

(*c*) because the maintenance of the institute was itself a purpose beneficial to a section of the British community determined by reference to impersonal qualifications (namely, persons with Welsh connections who were living in London) and was not a selection of private individuals chosen on account of personal qualifications.

It is convenient at this stage to refer to the standard classification of legal charity as stated by Lord Macnaghten in *Commissioners of Income Tax v. Pemsel*[3] :—" Charity in its legal sense comprises four principal divisions : trusts for the relief of poverty ; trusts for the advancement of education ; trusts for the advancement of religion ; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads."

It will be seen that the trustees' claim was based on the view that any trust for purposes beneficial to the community was a good charitable trust.

This view was emphatically rejected by the House of Lords. Lord Simonds declares that there are two propositions which must ever be borne in mind in any case in which the question is whether a trust is charitable. The first is that it is still the general law that a trust is not charitable unless it is within the spirit and intendment of the preamble to 43 *Eliz. c.* 4. The second is that Lord Macnaghten's classification of charity in the legal sense must also be read subject to the qualification that every object of public general utility is not necessarily a charity and as well as saying it is for the public welfare it must also be shown to be a charitable trust, that is to say, that it is within the spirit and intendment of the preamble to 43 *Eliz. c.* 4. The claim of the trustees therefore failed because it had not been alleged that the trust was beneficial to the community in a way which the law regards as charitable.

Their Lordships refer to the difficulty of reconciling the cases relating to what is within the " spirit and intendment " requirement but suggest no basic principle which will overcome that difficulty. They felt no doubt about this case and agreed with the Court of Appeal that, on its true construction, the trust did not vest the property in the trustees for charitable purposes only. Apparently the law is left in the unsatisfactory state referred to by John Brunyate[4] when he says :—" To say therefore, as has been said, that in establishing charity within the fourth head, you must show not only that the purpose is beneficial to the community, but also that it is within the spirit and intendment of the Statute of Elizabeth, can for practical purposes mean only this : that you must show it to be analogous to some other object which a Court has already held to be

3. [1891] A.C., at 583.
4. 61 L.Q.R., at 278.

charitable, an unprincipled method of extending law which is the source of just those evils that Russell L.J. referred to in the animal cases."

When the preamble of the Statute of Elizabeth is referred to, it will be seen that the legislators of that age had narrow views of what purposes could be said to be for the public benefit. But it has been said : " What is a public general purpose must be ascertained from the conditions of the age in which the donor lives.[5]" Have we not progressed so much in social ideas since the time of Elizabeth that no good purpose can be served by discriminating between trusts for the public benefit as charitable or non-charitable merely because some do not appear to be within the spirit and intendment of the Statute ? Over the intervening years many public purpose trusts have been held non-charitable which today might be considered charitable. In short in our anxiety to keep the spirit and intendment rule alive, we are tying ourselves to precedents established over a very long period which in the light of modern social development should not be applicable.

Although in the days of Elizabeth, the idea of a meeting place in London for Welsh people with facilities for spreading Welsh culture might not have been considered capable of serving any useful public purpose it would seem that in modern times with Government subsidisation of the arts through the British Council, the provision of funds for the preservation of historic buildings by the National Trust and the establishment of social centres throughout England, the trust in this case would have been considered beneficial to the public.

If then, this trust served a purpose similar to that which is served by many contemporary institutions which are assisted by the Government, it is conceivable that it should be regarded as being charitable. There may have been good reason in the days of Elizabeth for saying that every trust for the public benefit was not necessarily charitable, for then the Government did not concern itself with the public benefit to the extent that modern Governments do in these collectivist times. In other words it is submitted that today we have reached the stage where any trust which is for the public benefit should be regarded as charitable—charitable for the same reason that trusts " for the repair of bridges " were charitable in Elizabethan times—because it represents a saving to the National Exchequer.

The opportunity was presented to the House of Lords in this case to say that all trusts for the public benefit were charitable but their Lordships were apparently content to regard such a step as a one to be taken by the Legislature and they gave new life to the " spirit and intendment " test with the attendant evils referred to by Brunyate[6].

If any limitations are necessary in regard to an independent fourth head of charity then, as Brunyate suggests, they should be contained in the definition of public benefit.

He puts forward the following analysis of the independent fourth head :

> " Purposes beneficial to the community not falling within the preceding heads, which satisfy the following rules :—

5. per Isaacs J., *Taylor v. Taylor*, 10 C.L.R. 218, at 238.
6. *Supra.*

(*a*) A purpose is not charitable unless the benefit thereby conferred to the community is substantial having regard to the nature of what is given.

(*b*) A purpose which is for the direct benefit of a particular class of persons (other than a State institution) is not charitable, although it results in an indirect benefit to the community.

(*c*) Subject as aforesaid a purpose is charitable if either :—

(i) It confers a direct and tangible benefit on all members of the community ; or

(ii) It confers a direct and tangible benefit on a particular institution of the State tending to increase the efficiency of its commercial activity ; or

(iii) Not being for the direct benefit of a particular class of persons it is in the general enlightened opinion of the time wholly for the benefit of the community although such benefit be intangible.

(*d*) In this context the community means either the international community, the national community, or a local community (that is to say, a substantial geographical section of the national community) or a section of such a community determined by sex or age. Any other section of the community is to be regarded as a particular class of persons."

If Brunyate's definition, which was formed on the lines of the existing law had been referred to and approved by their Lordships, it is conceivable that the actual decision in this case would have been different. It would have been arguable that the purpose was one falling within proposition (*a*) and (*c*) (iii). It would seem clear that the expression " Welsh people " satisfied the definition of a community.

If the decision of the House of Lords has cleared up any doubt it has made it clear that redefinition of charity can be expected by means of the Statute Book only.

The fact that any redefinition of charity may require consideration of policy so far as exemptions from Income Tax are concerned, has probably contributed to the reluctance of the House of Lords to recast the rules in this case.

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