

CHARITABLE TRUSTS—"EDIFICATION OF MANKIND."

In the recent case of *Re Moss; Hobrough v. Harvey and Others*,¹ testatrix bequeathed to a spinster friend (Miss H.) a certain sum "for her to use at her discretion for her work for the welfare of cats and kittens needing care and attention." The trustee of the will sought a determination as to the validity of the gift.

The evidence shewed that Miss H. for more than thirty-five years had been sheltering stray cats and kittens and those no longer wanted by their owners. She found homes for some of the healthy ones, but if the cats and kittens were badly ill or hurt, or if she was unable to place them in homes, she had them "put to sleep in chloroform lethal boxes." Before the war, Miss H. had approximately fifty cats at a time under her care, but in 1947 the average was about sixteen.

Romer J. held that the gift constituted a valid charitable trust, finding the necessary element of public benefit in the fact that a gift to alleviate distress among cats and kittens would have an elevating effect on mankind. "It seems to me," he said, "that the care of and consideration for animals which through old age or sickness or otherwise are unable to care for themselves are manifestations of the finer side of human nature, and gifts in furtherance of these objects are calculated to develop that side and are, therefore, calculated to benefit mankind."²

Since his Lordship probably could have held the gift valid either on the ground that there was no element of perpetuity or uncertainty, or because the trust was for the benefit of animals useful to man (*The University of London v. Yarrow*;³ *In re Douglas*⁴), it is surprising that he adopted the more controversial doctrine of "edification of the public," particularly so in the light of the judgments by the Court of Appeal in *In re Coats' Trusts*.⁵

In the last-named case, a trust for a community of about twenty nuns of a purely contemplative order was held to be non-charitable because the requirement of benefit to the public was lacking. In answer to the contention that the holy lives led by the nuns edified the rest of the community, Lord Greene M.R. said⁶ that if that argument were accepted, a trust for the benefit of one person who led a saintly life would have to be held a valid charitable trust.

This, it seems, is almost exactly what Romer J. has done in the case under discussion. The trust is for one woman, who devotes her life to the care of cats and kittens, which devotion is thought to elevate mankind sufficiently to supply the element of public benefit necessary in every charitable trust.

Apart from the fact that we cannot get the cats' views on the preferability of being "put to sleep" as an alternative to remaining strays, and apart also from the fact that, in most neighbourhoods, the woman

1. [1949] 1 All E.R. 495.

2. *Ibid.*, at 497-8.

3. (1857) 1 DeG. & J. 72.

4. (1887) 35 Ch. D. 472.

5. [1948] Ch. 340; affirmed by the House of Lords *sub nom. Gilmour v. Coats*, [1949] 1 All E.R. 848.

6. [1948] Ch., at 351.

who looks after many cats, far from edifying the public, is regarded as somewhat strange—apart from these considerations, it is submitted that “edification of mankind” is far too uncertain and intangible a criterion to be admitted as proving benefit to the public in any class of charity. The animal cases seems to constitute the only class in which the argument has ever been accepted, the most authoritative decision to that effect being that of the Court of Appeal in *In re Wedgwood*⁷. Throughout the judgments in that case, it is evident that their Lordships reach their conclusions not so much on authority as on the then current broad interpretation of legal charity. Thus Kennedy L.J. said, “A review of the relevant authorities shews, I think, that during the past century there has been a growing tendency to enlarge the area of purposes which will be treated by Courts of Equity as charitable purposes.”⁸

Now, however, with the Inland Revenue Commissioners increasingly interested in the meaning of “charitable,” the House of Lords seems to have set its face in the opposite direction. *Gilmour v. Coats*⁹ and *National Anti-Vivisection Society v. Inland Revenue Commissioners*¹⁰ are examples of the stricter interpretation. In the latter case, Lord Wright observed that much that was said in *In re Wedgwood*¹¹ clearly went too far. “The limitation of the doctrine to animals useful to man which was prominent in the earlier of the animal cases, *London University v. Yarrow*,¹² was lost sight of or at least had fallen into the background.”¹³ Later he said, “I think that the whole tendency of the concept of charity in a legal sense under the fourth head”—Lord Macnaghten’s fourth class in *Income Tax Commissioners v. Pemsel*¹⁴—“is towards tangible and objective benefits and at least that approval by the common understanding of enlightened opinion for the time being is necessary before an intangible benefit can be taken to constitute a sufficient benefit to the community to justify admission of the object into the fourth class.”¹⁵

It is true that, in the same case, some of their Lordships seem to approve of the doctrine of “elevation of mankind” as expressed by Swinfen Eady L.J. in *In re Wedgwood*,¹⁶ (see *per* Lord Porter,¹⁷ Lord Simonds¹⁸ and Lord Normand¹⁹), but, except for Lord Porter, who dissented, the opinions expressed were *obiter*, and it seems safe to predict that if the question arose squarely in the House of Lords, a more substantial benefit than “elevation of mankind” would be required. Any other decision would be hard to reconcile with *Gilmour v. Coats*,²⁰ as it is difficult to see how one woman taking care of sixteen cats can be held more edifying than twenty women devoting their lives to God.

J. B. MOORE.

7. [1915] 1 Ch. 113.

8. *Ibid.*, at 118.

9. [1949] 1 All E.R. 848; see n. 5, *supra*.

10. [1948] A.C. 31.

11. *Supra*.

12. *Supra*.

13. [1948] A.C., at 45.

14. [1891] A.C., at 583.

15. [1948] A.C., at 49.

16. [1915] 1 Ch., at 122.

17. [1948] A.C. 56-7.

18. *Ibid.*, at 67.

19. *Ibid.*, at 76.

20. *Supra*.