BAILMENT.

Edwards v. Newland & Co.[1] is a decision that should be noted by owners of furniture depositaries. Somervell and Denning L.JJ. held that a contract to store furniture is one where the personal care of the bailee is of the essence of the contract, so that if the bailee, without agreement with the bailor, hands the goods to a sub-bailee, he is in breach of his contract *ab initio*. Tucker and Somervell L.JJ. also held that, apart from the doctrine of personal care being the essence of the contract, the contract of bailment relating to storage implies essentially that the bailee will not part with the custody. Both approaches lead to the same result that, if the goods, while in the hands of the sub-bailee, are destroyed by enemy action or theft, it is no defence to the bailee that the sub-bailee exercised all reasonable care. The bailee can escape, according to the doctrine of *Lilley v. Doubleday*[2], only where the risk is independent of his acts and inherent in the property itself. The instant case makes it clear that this doctrine is not confined to carriers who make an unauthorised deviation, but applies to all bailments, save where there is an express or implied permission from the bailor to delegate the control to a sub-bailee. Thus, in a case where a car is delivered to a garage for repairs, there may be implied permission to send it to the factory for certain tests.

The bailee in *Edwards v. Newland* was in a difficulty concerning proof of facts. Apparently owing to a misapprehension of the law, the bailee conducted the case in the court below on the ground that the sub-bailee exercised reasonable care, and therefore that the bailee was not liable. This point failing in the Court of Appeal, the bailee then wished to allege that the sub-bailee was negligent so as to obtain an indemnity from the sub-bailee as a third party, but it was held to be too late to raise that point.

G.W.P.

1. (1950) 66 T.L.R. (Pt. 2) 321.
2. (1881) 7 Q.B.D. 510.

CHARITY: BEQUEST TO GOVERNMENT DEPARTMENT.

Whilst it is fairly well established that gifts to the Government in aid of revenue are charitable in the legal sense, the effect of a gift to a particular department of the Government has lacked authority. This question, together with others less noteworthy, was raised before Dean J. in *Re Cain*[1] by the testator's gift of a fourth part of his residuary estate to "The Children's Welfare Department, Railway Buildings, Flinders Street, Melbourne." As the department lacked legal standing, being neither a legal entity nor an unincorporated society, the testator had failed to designate any certain beneficiary. It was impossible to regard the gift to the department as a gift to the Government itself.

1. [1950] A.L.R. 796.

The gift therefore was void unless it could be supported as a valid gift for charitable purposes.

In determining this question, Dean J. considered the Court of Appeal's decision in *Re Smith*[2] where a gift " to my country, England " was held charitable on the basis of authorities such as *West v. Knight*[3] and *A.-G. v. Lonsdale*[4] which established that gifts for the benefit of particular localities were charitable even though no express indication of the purposes to which the gifts were to be applied was given by the donors. *Re Smith* and the earlier decisions have not escaped criticism[5].

However Lord Simonds in *Williams' Trustees v. Inland Revenue Commissioners*[6] has suggested that it is possible " to justify as charitable a gift to ' my country, England ' on the ground that, where no purpose is defined, a charitable purpose is implicit in the context[7]." But where, as in the instant case, the gift was simply to one department, no charitable purpose could be implied, presumably because the department's comparatively specialized functions as against the multiplicity of functions fulfilled by either the general Government or a local governing body precluded any expectation that the gift would have a good chance of ultimately reaching an orthodox charitable destination.

It would appear that it is the inspiration of this expectation by the words of gift which provides the insubstantial warrant for implying from gifts to a country, city, parish or county without definition of particular purposes, an intention that the money is to be used for charitable purposes.

As no implication of an intention that the gift to the department should be used for charitable purposes generally could be made, the gift could not be held good under *Re Smith.*

In Dean J's. opinion " if the present gift be construed as a gift for carrying on the ordinary activities of a Government department pursuant to a statute, the gift is not a gift for charitable purposes, even if the activities are such that if carried on by private persons they would be charitable. Such activities are simply part of the government of

2. [1932] 1 Ch. 153.
3. (1679) 1 Ch. Cas. 134.
4. (1827) 1 Sim. 105.
5. *Tudor on Charities*, 5th ed., p. 45.
Albery 56 *L.Q.R.* p. 49. Albery would regard as charitable only those trusts for the benefit of a particular locality, which either directed the application of the trust property as part of " the national or local authority in relief of taxes or rates " or " for the maintenance or erection of public architectural structures or works in connection with a locality." Even if Albury's thesis be accepted, his first class of cases concerning relief of taxes or rates still involves a very wide view of the spirit and intendment of the preamble to 43 *Eliz.* c. 4, for as Brunyate has pointed out (61 *L.Q.R.* at p. 278) the statute's reference to the aid or ease of any poor inhabitants concerning payment of fifteens, setting out of soldiers, and of other taxes, is to a mode of relieving poverty and not to gifts in aid of revenue.
6. [1947] A.C. 447, at p. 459.
7. Lord Simonds then proceeded to comment on gifts for the benefit of particular localities (as for instance, a gift to a parish) where the nature of the benefit is defined. Here no reconstruction is possible because of the express indication of benefits. He did not comment on gifts for the benefit of particular localities where no particular benefit is expressly defined by the donor. In relation to the latter type of gift Lord Hanworth M.R., in *Re Smith* (as reported in 146 L.T. 145, at p. 149) stated that " you do not want further words when you are giving to the city, the parish, or the county, to indicate that that is to be for charitable purposes, because the destination which you have indicated is one which the Court endeavours to uphold and it finds in that very bequest the indication that the money so disposed of is to be used for charitable purposes." It would appear that this statement remains authoritative.
Although the House of Lords in *Williams' Trustees v. Inland Revenue Commissioners* has rejected the theory that mere localisation of purposes which are not charitable *per se* will not make them charitable, a gift for the benefit of a particular locality without definition of the benefits will probably be good because a charitable purpose can be found " implicit in the context."

the country[8]." Leaving aside the view that the construction of a gift as a gift for carrying on the ordinary activities of a Government department would seem to produce a gift in aid of the public revenue which is charitable, it is perhaps difficult to see why our activity which is charitable when carried on by private persons ceases to be charitable when the same activity is undertaken by the government. To say that it ceases to be charitable appears to make the description of an activity as charitable depend not so much on the nature of the purpose pursued, but on the nature of the agency through which fulfilment of the purpose is attempted.

However, as " the Court leans in favour of making the testamentary dispositions of a testator effective if possible within the limitations and in accordance with the principles of law," Dean J., following the approach adopted by the High Court in *Diocesan Trustees of the Church of England in Western Australia v. Solicitor-General*[9], thought that the testator had shown an intention by his gift to the Children's Welfare Department to benefit children under the care of the department by providing benefits additional to those paid for out of public revenue. Thus the gift was construed as a gift for the benefit of children under the care of the department, which purpose was clearly charitable. The department's lack of legal standing did not prevent the gift being a valid charitable gift.

The following conclusions appear to be warranted :

(*a*) A gift to a department of Government as distinct from a gift to the Government itself will not be regarded as charitable even under the category of gifts in aid of public revenue, unless perhaps it is clearly shown that the gift is intended to be in aid of public revenue.

(*b*) If that intention is not shown, a gift to a particular department of Government will be held to be charitable only if—

(i) it is possible to find an intention on the part of the donor to further the performance of the department's general functions in some manner which is not a mere relief of Government expenditure, and

(ii) the provision of those additional benefits is itself a legal charitable purpose.

It is a consoling thought that as we gradually move towards the level at which the benefits conferred by Government departments cannot be improved upon, this category of charitable gifts will diminish.

H. A. J. F.

8. [1950] A.L.R. at pp. 800-801.
9. (1909) 9 C.L.R. 757.