BOOK REVIEWS

The Law and Practice Relating to Charities, by Hubert Picarda, London, Butterworth & Co. (Publishers) Ltd., 1977, xcii + 765 pp. (including index) $94.50.

Prior to the appearance of Mr. Picarda's book, the only comprehensive modern text on the English law of charities was *Tudor on Charities.* The current edition of *Tudor*[1] was published in 1967 and is now out of print. As far as one can ascertain, there is no new edition in sight. Since 1967, however, there have been major developments in the subject. In the United Kingdom, there is new legislation on race relations, education and taxes. Significant judgments have included *Re Resch's Will Trusts,*[2] the *Scottish Burial Reform and Cremation Society Case,*[3] the two *Law Reporting Cases*[4] and *Dingle* v. *Turner.*[5] The annual reports of the Charity Commissioners for England and Wales have frequently drawn attention to the deficiencies of the law and difficulties in its administration. Other calls for reform have come from judges, academics and politicians. They have been hurried along by Benedict Nightingale's persuasive and entertaining book, *Charities.*[6] The Tenth Report from the House of Commons' Expenditure Committee, 1975,[7] recommended, *inter alia,* a revision of the legal definition of charity and a more flexible *cy-près* doctrine. Lord Goodman's Committee, set up by the National Council of Social Service,[8] later made other, more moderate recommendations for reform. Obviously, the first step towards effective reform is to be clear about the present law.

Mr. Picarda's statement of the modern law is, therefore, useful and timely. The book is clearly written and beautifully presented. The headings and organization make it easy to find the material on any

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[1] (6th ed. 1967) by D. H. McMullen, S. G. Maurice and D. B. Parker.
[2] [1969] 1 A.C. 514.
[3] [1968] A.C. 138.
[4] *Incorporated Council of Law Reporting of the State of Queensland* v. *Federal Commissioner of Taxation* (1971) 125 C.L.R. 659 (High Court of Australia); *Incorporated Council of Law Reporting for England and Wales* v. *Attorney-General* [1972] Ch. 73 (English Court of Appeal).
[5] [1972] A.C. 601.
[6] London, Allen Lane, 1973.
[7] See (1976) 39 *Mod. L.R.* 77.
[8] London, Bedford Square Press, 1976.

given issue. The author provides a comprehensive coverage of the present law, including the definition of charity, the creation and construction of charitable trusts, schemes, administration, restrictions on fund-raising, the respective functions of the Crown, the Court and the Charity Commissioners, court proceedings, and taxation. Though he does not attempt to discuss reform as such, his sensitivity to modern criticism of the law leads him to deal fully with controversial areas, such as the rules about political trusts, *cy-près* schemes and gifts to charitable institutions, topics not adequately covered in *Tudor*.

One of the strengths of Mr. Picarda's book is the use of illustrations from the Charity Commissioners' reports. Another lies in the fairly extensive recourse to Commonwealth and United States authorities, though he notes in his Preface that "reasons of space and the demands of a practitioner's life" prevent the treatment from being exhaustive. One omission, however, is Helsham, J.'s judgment in *Re Stone*,[9] which seems to this reviewer to contain a better approach to the problem of overseas charities than the approach taken by Jacobs, J. in *Re Lowin*,[10] which Mr Picarda commends.[11]

Australian lawyers will be most interested in the non-statutory parts of the book, since we have not yet adopted anything approaching the Charities Act, 1960 (U.K.).[12] Mr. Picarda's treatment of the case law is sound and thorough. His critical comments are usually telling: see, for example, his comments on *Re Watson*[13] and *Re Cole*.[14] Occasionally however, one is a little disappointed by the absence of criticism. For example, we are told that *Re Koettgen's Will Trusts*[15] has been much criticized,[16] but the author expresses no opinion on it. The divergent views in the two modern *Law Reporting Cases*[17] are recounted without comment.[18] And on the relevance of fiscal privileges to the definition of charity, a highly controversial matter, Mr Picarda is content to set out Lord Cross's views and describe the point as "an open question".[19]

There appears to be no treatment at all of two issues of principle, each of some importance. One is an interpretation of Viscount Simonds' speech in *Inland Revenue Commissioners* v. *Baddeley*[20]

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[9] (1970) 91 W.N. (N.S.W.) 704.
[10] [1965] N.S.W.R. 1624.
[11] *Picarda*, 24.
[12] The New Zealand Property Law and Equity Reform Committee has recently circulated a working paper which rejects the suggestion that a system of registration along the lines of the Charities Act, 1960 (U.K.) be established.
[13] [1973] 1 W.L.R. 1472; *Picarda*, 75.
[14] [1958] Ch. 877; *Picarda*, 42.
[15] [1954] Ch. 252.
[16] *Picarda*, 53.
[17] *Supra* n. 4.
[18] *Picarda*, 50-51.
[19] *Id.* 21.
[20] [1955] A.C. 572.

which has currency in the Australian textbook[21] and in some cases. Some of Viscount Simonds' observations[22] may be interpreted as requiring a rational nexus or relevance between the nature of the gift and the class of beneficiaries chosen to enjoy it. A trust to provide bibles for Methodists is a charitable trust, as is a trust to build a bridge for the inhabitants of a particular locality. But a trust to build a bridge for the exclusive use of the Methodists of a locality is invalid. This is apparently not because the Methodists of a locality are not a section of the community, or because the class of beneficiaries is defined by a double qualification, but rather because it is irrational to confine *this* gift in *that* way. Jacobs, K.C. made a submission on these lines to the Privy Council in *Davies* v. *Perpetual Trustee Co. Ltd.*,[23] and their Lordships appear to have accepted it.[24] The principle was then applied in *Attorney-General for New South Wales* v. *Cahill*.[25] If it is right, then "public benefit" (at least in Lord Macnaghten's fourth category) is ambiguous in three directions: a charitable trust must be for the public or a section of the public, it must benefit them, and there must be a rational connection between the benefit and the group chosen to receive it. Mr. Picarda may disagree with this interpretation of *Baddeley*,[26] but it has sufficient judicial support to demand attention.

The other issue relates to the author's suggested new classification of charitable trusts, to replace Lord Macnaghten's. The relief of poverty, the advancement of education and the advancement of religion (Lord Macnaghten's first three categories) remain. But Lord Macnaghten's fourth, other purposes beneficial to the community, is subdivided by Mr. Picarda into: promotion of health, provision of recreational facilities, municipal betterment and relief of the tax and rating burden, gifts for the benefit of a locality, certain patriotic purposes, protection of life and property, social rehabilitation, protection of animals, and a miscellaneous category (which seems to include only the promotion of industry, commerce, horticulture and agriculture, plus a few other cases which, according to the author, would not be followed today). The new classification is a marked improvement on Lord Macnaghten's. But it is not, it seems, meant to be exhaustive. The process of developing analogues from the Preamble and decided cases in response to society's demands, so well described by Lord Wilberforce in the *Scottish Burial Reform and Cremation Society Case*,[27] may lead the courts into new categories of charitable purposes.

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[21] *Jacobs' Law of Trusts in Australia* (4th ed. by R. P. Meagher, Q.C. and W. M. C. Gummow, 1977) at 142-3. The point also appeared in the second and third editions.
[22] *Supra* n. 20 at 589ff.
[23] [1959] A.C. 439 at 443-5.
[24] *Id.* 456.
[25] [1969] 1 N.S.W.R. 85 at 93 *per* Wallace, A.-C.J.
[26] *Picarda*, 21-2, 87-8.
[27] *Supra* n. 3 at 154ff.