It is unlikely that this radical departure from orthodox legal thought would win much support from contemporary judges, but we shall probably hear more of it. Recalling the equally startling judgment of Denning J., as he then was, in *Central London Property Trust Ltd.* v. *High Trees House Ltd.*,[42] where he denied the necessity for consideration in all cases of simple contract, one may say that the learned Lord Justice has acquired a reputation for stimulating and provocative attacks on legal orthodoxy, attacks which are supported by a deep historical scholarship.

R.A.

CRIMINAL LAW

Appeals from Courts of Petty Sessions.

The *Justices Acts Amendment Act of* 1949, which came into force on April 22, 1949, made the first radical alteration in the Principal Act since that Act was passed in 1886. The provisions dealing with appeals from Justices—Part IX of the Act—were repealed and almost entirely new provisions were inserted in lieu thereof. Prior to the 1949 Amendment Act there were three modes of appeal to the Supreme Court from the decisions of justices—(1) Appeal by way of application to quash a conviction or order ; (2) Appeal by way of Special Case ; and (3) Appeal by way of procedure where appeal formerly lay to a District Court.

From time to time Judges of the Supreme Court had drawn attention to the limited nature of these modes of appeal and the limited powers of the Supreme Court when hearing such appeals.

In lieu of the original provisions there are now two modes of appeal open to persons seeking to challenge the decisions of justices—(1) Appeal by way of Order to Review ; and (2) Appeal to a Judge of the Supreme Court.

The appeal by way of Order to Review—which may be made returnable before the Full Court or a Judge—is open to any person who feels aggrieved as complainant, defendant, or otherwise by any conviction or order of any justices or justice, or against whom any warrant has been issued by any justices or justice. A new definition of "order" inserted in the Acts gives a very wide operation to this mode of appeal, but there is a limitation in regard to orders made on complaints for moneys recoverable summarily or for claims determinable summarily (Section 209 (5)).

The widest powers are given to the Full Court or Judge, as the case may be, on the return of an Order to Review (Section 215).

The appeal to a Judge of the Supreme Court under section 222 of the Acts is open to any person who feels aggrieved whether as complainant, defendant, or otherwise by any order made by justices or a justice in a summary manner upon a complaint for an offence or breach of duty. However, a defendant cannot appeal under this section unless (*a*) the fine, penalty or forfeiture exceeds the sum or value of £5 or the imprisonment adjudged exceeds one month ; or (*b*) he has upon application made within seven days after the decision obtained the leave of a Judge to appeal under the section.

Where a defendant has pleaded guilty or admitted the truth of the complaint, an appeal under this section only lies on the ground that the fine, penalty, forfeiture or punishment is excessive or inadequate. There can be no appeal against conviction.

42. [1947] K B. 130. See note, 22 A.L.J. 427.

In this method of appeal also wide powers are given to the Judge hearing the appeal (section 225).

Provision is made in each method of appeal for dealing with the position where an appellant fails to prosecute his appeal. Furthermore, provision is made in section 241 for the arrest of an absconding appellant.

There is now a right of appeal open to both parties in respect of any fine, penalty, forfeiture, or punishment imposed by justices. Previously the only power to alter the punishment imposed by justices was in the case of a re-hearing by a Judge on an appeal by a defendant by way of the procedure where an appeal formerly lay to a District Court.

R.F.C.

EQUITY

Charitable trusts.

Apart from some such epoch-making decision as *Re Diplock*[43] the section of equity most affected by current decisions is that dealing with charitable trusts.

The two most important decisions of general significance in this sphere are undoubtedly those of *Re Strakosch*[44] and *Gilmour* v. *Coats*.[45] In the former case there was a direction to trustees to apply a fund for any purpose which in their opinion was designed to strengthen the bonds of unity between South Africa and the Mother Country and would incidentally conduce to the appeasement of racial feeling. The gift if it was to be charitable would have to come within Lord Macnaghten's fourth class, *viz.*, trusts for purposes beneficial to the community. It was pointed out, however, that the gift must be not only for the benefit of the community, but beneficial in a way that the law regards as charitable, that is, it must be within the "spirit and intendment" of the Statute of Elizabeth. Here the gift left a very great latitude of possible application. There were many modes of application which would tend to attain the objects of the gift which were not charitable within such technical sense. Hence the gift was held void. The case emphasizes that the primary test is the Statute of Elizabeth and that the possibility of modes of application which are not charitable is fatal to a gift. It is one of a line of recent authorities which have clarified the scope of the fourth class in Lord Macnaghten's famous classification.

Gilmour v. *Coats*, following the older case of *Cocks* v. *Manners*,[46] stresses the necessity of the element of public benefit in the case of a charitable trust. Here the trust was for the purposes of a Roman Catholic priory which consisted of a community of cloistered nuns who devoted their lives to prayer and contemplation. It was held not to be charitable as the element of public benefit was essential to render a purpose charitable. The House of Lords took a materialistic view of the word "benefit," holding that the elements of edification by example and assistance by intercessory prayer were too vague and intangible to satisfy the test.

Gibson v. *South American Stores*[47] is worth mentioning for the conclusion of Harman J. that the public element was as necessary in the case of trusts for the relief of poverty as in the case of other charitable

43. [1948] Ch. 465.
44. [1949] Ch. 529.
45. [1949] A.C. 426.
46. (1871) L.R. 12 Eq. 574.
47. [1949] Ch. 572