

CHARITIES BILL.

NOTES ON CLAUSES.

CLAUSE 1 sets out the short title and provides for the provisions of the Act to come into operation on a day or days to be fixed by proclamation.

CLAUSE 2 modifies the existing law as to circumstances in which the court may permit the original purposes of a charitable gift to be altered to allow the property given, or part of it, to be applied *cy prè*s (i.e. as near as practicable to the original purposes).

Sub-clause (1) states the circumstances in which property given to a charity may be applied *cy prè*s.

Paragraphs (a) and (b) do not alter the existing law, but the remaining paragraphs of the sub-clause do so.

Paragraph (c) applies where two or more gifts can be combined—it is not necessary to show that the original purpose cannot be carried out, but the test is whether the gift can be “ more effectively used in conjunction ” with other property applicable for similar purposes, having regard to “ the spirit of the gift ”.

Paragraph (d) enables a *cy prè*s application where the original purposes were laid down by reference to an area or a class of persons and the area has ceased to be a unit for some other purpose, or the area or class of persons has since ceased to be suitable or practical in administering the gift.

Paragraph (e) deals with other changes that have occurred in relation to the original purposes of a charitable gift. Sub-paragraphs (i) and (ii) state the existing law, but sub-paragraph (iii) is new—possibility or practicability is no longer the test, and it is sufficient that the original purpose is not a suitable and effective method of using the property, regard being had to the spirit of the gift.

Sub-clause (2) is intended to make clear that sub-clause (1) does not alter the conditions that have to be satisfied under the existing law for an application of property *cy prè*s, except in relation to establishing that the original purposes have failed.

Sub-clause (3) is a construction provision. It extends the references in the section to the original purposes of a gift to the purposes for which the property is for the time being applicable.

Sub-clause (4) makes it clear that a trust for charitable purposes places trustees under a duty, in appropriate circumstances, to secure the application of the trust property *cy prè*s.

CLAUSE 3 is designed to facilitate the application *cy prè*s of property given for charitable purposes which fail, despite the absence of a general charitable intention on the part of the donor.

Sub-clause (1) sets out the cases to which the provision applies, namely “ property given for specific charitable purposes which fail ” where the donor cannot be identified or found or where the donor has given a written disclaimer of his right to have the property returned.

Sub-clause (2) specifies the classes of property that shall be conclusively presumed, without advertisement or inquiry, to have been given by donors who cannot be identified e.g. the proceeds of collecting boxes, lotteries and so on.

Sub-clause (3) enables the court to direct that property not falling within sub-clause (2) shall be treated, without advertisement or inquiry, as having been given by donors who cannot be identified. This provision applies where, having regard to specified circumstances, it would be unreasonable to incur expense with a view to returning the property or for the donors to expect the property to be returned.

Sub-clause (4) deems a donor to have parted with his interest in property, applied *cy près* under this provision, at the time the gift was made. However, the sub-clause protects the rights of a donor of property so applied as having been given by donors who cannot be identified or found, otherwise than under sub-clause (2) or (3). In such a case the donor, within twelve months after the date on which the court makes a scheme, may recover from the charity for which the property is applied a sum equal to the donor's gift less expenses properly incurred by the charity trustees in connexion with claims relating to his gift.

Sub-clause (5) defines when charitable purposes shall be deemed to fail.

Sub-clause (6) is an interpretation provision in relation to references to a donor and references to property given.

Sub-clause (7), in effect, applies the section to property given for charitable purposes whether given before, or on or after, the commencement of the Act.

CLAUSE 4 makes provision for the Attorney-General, rather than the court, to sanction the application *cy près* of property given for charitable purposes where the value is less than \$25,000.

Sub-clause (1) sets out the classes of property given for charitable purposes in respect of which application may be made to the Attorney-General for directions for the application of the property *cy près*.

These are—

1. Property valued at less than \$25,000 to which clause 2 or 3 apply.
2. Property, valued at no more than \$1,000, given for specific charitable purposes which fail.

Sub-clause (2) enables the Attorney-General to make investigations and inquiries in relation to applications and he may require the trustees to furnish information, opinions or advice.

Sub-clause (3) enables the Attorney-General to approve a scheme proposed by the trustees of property given for charitable purposes for the application of the property, and to authorize the trustees to deal with the property, if he is satisfied—

- (a) that the property falls within one of the classes set out in sub-clause (1) ; and
- (b) where the property was given for specific charitable purposes that fail, that the person or persons who would be entitled to the property but for the present provisions have given their consent, unless the Attorney-General considers that it would be unreasonable to incur expense in identifying or locating the person or persons.

Sub-clause (4) limits the powers of the Attorney-General in dealing with applications by trustees. It makes clear that the Attorney-General shall not have any greater powers than are exercisable by the court in charity proceedings or power to determine certain specified questions or disputes.

Sub-clause (5) protects trustees from liability for breach of trust arising solely from the application of trust property in accordance with any scheme sanctioned, or authority given, by the Attorney-General.

CLAUSE 5 enables the trustees of property valued at less than \$25,000 given for charitable purposes to apply to the Attorney-General for his opinion or advice in relation to the performance of their duties as trustees.

Sub-clause (1) requires an application in writing and payment of any prescribed fee.

Sub-clause (2) enables the Attorney-General to make investigations and inquiries, and to require the trustees to furnish information, opinions or advice.

Sub-clause (3) provides that a trustee acting in accordance with the opinion or advice of the Attorney-General shall be deemed to have acted in accordance with his trust unless, when he does so—

- (a) he knows or has reasonable cause to suspect that the opinion or advice was given in ignorance of material facts ; or
- (b) the court has made a decision on the matter or proceedings to obtain a decision are pending.

CLAUSE 6 is designed to protect trustees who make payments to a charitable body under a trust instrument. Subject to any express provision to the contrary in the trust instrument, the receipt of the treasurer or other proper officer of the charity is a sufficient discharge to the trustees. *Sub-clause* (2) limits the application of the provision to trust instruments coming into existence on or after its commencement.

CLAUSE 7 provides for the making of regulations in relation to applications and related matters.