VOL. XXVII—PART IX

No. 1358—High Court of Justice (King's Bench Division)—
23rd March and 10th May, 1944

Court of Appeal—14th, 15th and 16th May and 13th June, 1945

House of Lords—28th and 30th January and 21st March, 1947

Trustees of Sir H. J. Williams's Trust *v.* Commissioners of Inland Revenue[1]

Income Tax—Exemption—Charitable purposes—Income Tax Act, 1918 (8 & 9 *Geo.* V, *c.* 40), *Section* 37 (1) (*a*).

Certain properties were held by the Appellant Trustees under a deed executed in 1937 "*for the purpose of establishing and maintaining an Institute and* "*meeting place in London . . . for the benefit of Welsh people*"—*defined as meaning and including* "*persons of Welsh nationality by birth or descent or born or* "*educated or at any time domiciled in the Principality of Wales or the County of* "*Monmouth*"—"*resident in or near or visiting London with a view to creating* "*a centre in London for promoting the moral, social, spiritual and educational* "*welfare of Welsh people and fostering the study of the Welsh language and* "*of Welsh history literature music and art.*" *Without prejudice to the generality of these words the deed also set out certain purposes for which any part of the properties used for the Institute could be used; these purposes included specified purposes of an educational, social and recreative character and also any of the purposes of a named existing Association* (*a company limited by guarantee*), *whose objects and activities were in fact similar. Under powers in the deed one block of the trust property was occupied and managed as an Institute by the Association; the remainder of the trust property was let to tenants. The Trustees were directed to apply the rents and profits arising from the settled properties to carrying on the Institute and maintaining the properties.*

The Trustees claimed exemption from Income Tax, Schedule A, under Section 37 (1) (*a*) *of the Income Tax Act,* 1918, *in respect of the rents of the let properties on the ground that the Trust was established for charitable purposes only and that the rents of the let properties, which they had applied in maintaining those properties and in making two donations to the Association for the purposes of the Institute, had been applied to charitable purposes only. The claim was refused by the Commissioners of Inland Revenue, and, on appeal, by the Special Commissioners, who held that the Institute could not be effectively distinguished from a social club and that it was not established for charitable purposes only.*

Held, *that the decision of the Special Commissioners was correct.*

([1] Reported (C.A.) 173 L.T. 221; (H.L.) 176 L.T. 462.

CASE

Stated under the Income Tax Act, 1918, Section 149, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the King's Bench Division of the High Court of Justice.

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on 6th October, 1942, the trustees of a trust deed created by Sir Howell Jones Williams (who are hereinafter called " the trustees ") appealed against the refusal of the Commissioners of Inland Revenue to grant exemption from Income Tax, Schedule A, under Section 37 (1) (*a*) of the Income Tax Act, 1918, in respect of the rents of certain properties vested in the trustees and applied by them as hereinafter appearing. The years to which the claim related were 1940–41 and 1941–42.

2. On 12th October, 1937, Sir Howell Jones Williams (hereinafter called " the settlor ") entered into a trust deed of which a copy is annexed hereto, marked " A ", and forms part of this Case(1).

Under this trust deed Howell J. Williams, Ltd. were appointed trustees, but on 13th October, 1937, this company resigned their trusteeship, and by a deed of appointment of that date seven individuals (including the settlor who has however since died) were together appointed as new trustees. The present appeal was brought by the remaining trustees. A copy of the deed of appointment is annexed hereto, marked " B ", and forms part of this Case(1).

3. The trust deed of 12th October, 1937 (which is hereinafter referred to as " the trust deed "), recites *inter alia* that certain properties specified in the schedule to the trust deed were at an earlier date transferred to the trustees, and that these properties were purchased by the trustees out of moneys provided by the settlor, to hold the same on trust.

4. The said trust properties have always been maintained as two blocks. The first block (hereinafter referred to as " the Institute block ") consists of property in Gray's Inn Road and Mecklenburgh Square which was adapted for use as an Institute in accordance with the trusts hereinafter cited. The second block, consisting of 29, 30 and 31 Doughty Street, was let out to tenants. The first block only—and not, as incorrectly indicated in (IV) of the recitals to the deed, the whole of the trust properties—was until May, 1941 (see paragraph 7 hereof), occupied by the Young Wales Association (London), Ltd. (mentioned in the trust deed) which later changed its name to London Welsh Association, Ltd., and which is hereinafter referred to as " the " Association."

5. The trustees were not on this claim contending that this Association was established for charitable purposes only. The claim before us was that not the Association but the trustees were so established; that in applying the rents of 29, 30 and 31 Doughty Street to the purposes of the before-mentioned Association (which they claimed as an application of income of the trust under clause 9 of the trust deed), they had applied the same to charitable purposes only, and that, consequently, they were entitled to exemption from Income Tax, Schedule A, in respect of the rents of the said properties.

6. Clause 4 of the trust deed is in the following terms, the " Settled " Properties " referred to meaning all the before-mentioned trust properties, and the " Endowment Fund " meaning any moneys vested in the trustees upon the trusts of the said deed as capital:—

" 4. The Trustees shall hold the Settled Properties and the Endowment " Fund for the purpose of establishing and maintaining an Institute and

(1) Not included in the present print.

" meeting place in London to be known as ' The London Welsh Association ' " (hereinafter called ' the Institute ') for the benefit of Welsh people resident " in or near or visiting London with a view to creating a centre in London " for promoting the moral social spiritual and educational welfare of Welsh " people and fostering the study of the Welsh language and of Welsh history " literature music and art."

Clause 5 of the trust deed relates to " the Institute block " and is as follows:—

" 5. Without prejudice to the generality of the foregoing provisions the " Trustees may use or permit such part of the Settled Properties as is required " to be used as the Institute for all or any of the following purposes:—

" (A) For providing a meeting place for Welsh people in London and " their friends where they can obtain facilities for social intercourse study " reading rest recreation and refreshment.

" (B) For meetings concerts lectures and other forms of instruction " discussion or entertainment especially in relation to subjects connected " with the Welsh language and Welsh history literature music and art.

" (C) For any educational purposes connected with the Welsh language " or Welsh subjects or likely to be of value or interest to Welsh people.

" (D) For establishing and maintaining a library of periodical historical " and other literature in the Welsh language or relating to Wales or which " is likely to be of use to Welsh people.

" (E) As a hostel for the accommodation of Welsh people in London.

" (F) For any of the purposes of the Association or of any similar " association which may be formed for the benefit of Welsh people in " London and which purposes may be within the general scope of the " Trusts declared in Clause 4 hereof.

" (G) Generally for such other purposes being charitable and for the " benefit of Welsh people as the Trustees may from time to time think fit " Provided always that the Trustees shall not permit any alcoholic liquor " to be sold or consumed on any part of the Settled Properties for the " time being occupied or used for the purposes of the Institute."

Clauses 9 and 10 are as follows:—

" 9. The Trustees shall apply the income arising from the Endowment " Fund and any rents and profits arising from the Settled Properties and any " other profits income or contributions which may be received by the Trustees " in carrying on the Institute and otherwise for the maintenance repair and " insurance of the Settled Properties and in payment of the rates and other " outgoings and towards the cost of maintaining equipping and using the " Settled Properties for the purposes of the Institute and generally for carrying " into effect all or any of the trusts of this Deed Provided always that the " Trustees may set aside and invest in authorised investments such sums out " of the said income or the said rents and profits as they may from time to time " consider necessary or desirable as a reserve fund to meet any extra expenses " in connection with the Settled Properties or in carrying out the trusts hereof " provided that the income of such reserve fund shall be applicable as income " hereunder and the Trustees may at any time apply the capital of such reserve " fund or any part thereof as income.

" 10. The Institute shall not at any time be used for meetings of any " political party or for the purposes of any such party and no part of the " property capital or income for the time being subject to the trusts hereof " shall at any time be used or applied for any such purposes or for any other

" purposes not being charitable Provided that this prohibition shall not " prevent any application of money or property for purposes necessarily " incidental to carrying out the charitable trusts of this Deed."

Clauses 11 to 15 deal with the carrying on of the Institute. In particular clause 13 provides that the trustees may delegate their power to carry on the Institute by appointing managers, while clause 14 empowers the trustees (in exercise of that power of delegation) to appoint the Association (see paragraph 4 of this Case) to act as managers of the Institute, exercising powers specified in clause 15. The trustees may also permit the Association to occupy the settled properties as long as they think fit, subject to the use of the same for the purposes of the trusts.

7. Under the said powers the trustees did in fact allow the Association to occupy " the Institute block " and to act as managers of the Institute. The Association so acted until May, 1941, and before this date the trustees made two donations to the Association for the purposes of the Institute. The Association had been unable to continue their occupation of the premises after May, 1941, the Institute having since that date been let to the Welsh Services Club, and no further donations have been made.

8. A copy of the memorandum and articles of association of the Association, under its original name, the Young Wales Association (London), Ltd., is annexed hereto, marked " C ", and forms part of this Case(1).

A copy is also annexed hereto, marked " D ", and forming part of this Case(1), of a booklet issued by the Association under its later name, London Welsh Association, Ltd.

9. The objects of the Association are conveniently summarised in (III) of the recitals to the trust deed (annexe " A ") as, *inter alia*:—

" (i) to promote Welsh interests in London and to provide means of social " intercourse between persons of Welsh nationality birth domicile education or " sympathies (ii) to consider and discuss all questions affecting Welsh interests " (iii) to foster the study of the Welsh language and to procure the delivery of " lectures on subjects connected with Welsh history literature music and art " (iv) to form and maintain a library of periodical historical and other " literature in the Welsh language or relating to Wales."

A print of the memorandum of association can (if necessary) be referred to.

10. The activities of the Association are set out under eleven heads on page 6 of its booklet (annexe " D "). As appears in the evidence summarised in the following paragraph of this Case, these activities included, among others, the activities proper to the Institute.

11. Evidence was given before us by Mr. V. J. Lewis. Mr. Lewis was one of the seven trustees of the trust deed appointed under the deed of appointment of 13th October, 1937. He was secretary of the Association between January, 1937, and December, 1938, and had also been secretary from January, 1942, onwards. Two of his fellow trustees were also directors of the Association.

Mr. Lewis stated in evidence that he and his said fellow trustees met and considered what should be done with the funds which they hold under the trust deed, and decided to make two donations to the Institute. They considered that they were carrying out the purposes of the trust deed, because it was necessary that the Institute should be maintained. The Association were running their headquarters premises at a loss, although making a profit on their other activities, and he and his fellow trustees knew that any donation

(1) Not included in the present print.

which they made would be paid into the headquarters account, from which the activities of the Institute were financed. This was one of two accounts, the other being the general account. On the headquarters account there was a debit balance. On the general account there was a credit balance; into this account the subscriptions of members of the Association were paid, and also donations from another distinct trust, and out of it was paid printing, postage and secretarial expenses, Corporation Duty, etc. The Association did not keep separate accounts as to the expenditure of the donations.

The objects to which the donations were intended to be devoted were numbers 1, 4, 5, part of 7, and numbers 8 and 11 of the activities of the Association, as set out on page 6 of its booklet (annexe " D ").

These activities are there described as follows:—

" 1. Public lectures and debates, a Music Club, and literary and educa-
" tional classes.

" 4. The maintenance of Headquarters Premises at 11 Mecklenburgh
" Square, W.C.1, comprising Lounge and Writing Room, Library (where
" current Welsh and English periodicals and newspapers may be found),
" Billiard Room, Tea and Games Rooms, etc., available for the use of Head-
" quarters Members of the Association, and of all Donors and Subscribers.

" The Headquarters Premises and in particular the London Welsh Hall
" are increasingly becoming the meeting place of the committees and functions
" of the various London Welsh societies and other organisations.

" 5. Badminton and Table Tennis Clubs are maintained in connection with
" the Headquarters Premises.

" 7. Dances, whist and bridge drives, and annually a dinner and a garden
" party.

" 8. A weekly Social and Dance is held for headquarters members in the
" London Welsh Hall, on Saturday evenings. The charge made for admission
" is only 6*d.* (ordinary members, and visitors on the introduction of a
" member, may obtain admission at 2*s.*): a dance band is provided, and the
" popularity of these weekly functions among the younger members of the
" London Welsh community is undoubted.

" 11. The Headquarters office of the Association serves in many ways as a
" Central Information Bureau for London Welsh people and visitors to the
" metropolis."

In making the donations the trustees regarded themselves as contributing to dances, whist and bridge drives held at the Institute, and as part of the activities taking place there (part of No. 7) and not to any such activities held elsewhere.

A prominent part of the activities of the Institute consisted of lectures, debates, music club, and literary and educational classes. Classes were held in the Welsh language, history and literature. The trustees did not contribute towards the theatre guild referred to in No. 2 of the list of activities.

12. It was contended on behalf of the trustees that they were established for charitable purposes only and that the moneys applied by them (under clause 9 of the trust deed) in maintaining " the Doughty Street block " and in making the donations made by them to the Institute were applied to charitable purposes only, and that consequently the trustees were entitled to exemption from Income Tax, Schedule A, under Section 37 (1) (*a*) of the Income Tax Act, 1918, in respect of the rents of the properties in Doughty Street which were so applied. This contention was resisted on behalf of the Crown.

13. We, the Commissioners who heard the appeal, having considered the documents, the evidence and the arguments addressed to us, gave our decision as follows:—

Under the terms of the trust deed the purposes of the Institute, to which the rents of the properties in question held by the trustees have been applied, are wide and inclusive. While certain of its features conform to the idea of a charity, we have come to the conclusion that these features are not so dominating, nor is the general character of the Institute such, as effectively to distinguish it from an ordinary social club. We are unable to say that it is established for charitable purposes only, and the application accordingly fails.

14. The Appellants immediately after the determination of the appeal declared to us their dissatisfaction therewith as being erroneous in point of law and in due course required us to state a Case for the opinion of the High Court pursuant to the Income Tax Act, 1918, Section 149, which Case we have stated and do sign accordingly.

G. R. HAMILTON,
H. H. C. GRAHAM, } Commissioners for the Special Purposes of the Income Tax Acts.

Turnstile House,
94/99 High Holborn,
London, W.C.1.

8th June, 1943.

The case came before Macnaghten, J., in the King's Bench Division on 23rd March, 1944, when judgment was reserved. On 10th May, 1944, judgment was given in favour of the Crown, with costs.

Mr. Cyril L. King, K.C., and Mr. N. E. Mustoe (for Mr. F. N. Bucher, on war service) appeared as Counsel for the Appellant Trustees, and the Solicitor-General (Sir David Maxwell Fyfe, K.C.), Mr. J. H. Stamp and Mr. Reginald P. Hills for the Crown.

JUDGMENT

Macnaghten, J.—The Appellants in this case are the owners of the freehold hereditaments known as Nos. 29, 30 and 31 Doughty Street in the parish of St. Pancras in the County of London, and they applied under Section 19 of the Finance Act, 1925, to the Commissioners of Inland Revenue for exemption from Income Tax under Schedule A in respect of those houses, on the ground that the houses were vested in them for charitable purposes and that the rents of the houses were applied by them for charitable purposes only within the meaning of Section 37 (1) of the Income Tax Act, 1918.

These three houses, together with other freehold property known as No. 11 Mecklenburgh Square and 157 to 163 Gray's Inn Road, are held by the Appellants subject to the provisions of a trust deed, dated 12th October, 1937, made between Howell J. Williams, Ltd., as trustees, of the one part, and Sir Howell J. Williams, therein called the settlor, of the other part. All the properties comprised in and subject to the trusts of the deed are described in the deed as " the Settled Properties ".

By clause 4 of the trust deed it is provided that the trustees should hold the settled properties " for the purpose of establishing and maintaining an " Institute and meeting place in London . . . for the benefit of Welsh people " resident in or near or visiting London with a view to creating a centre in " London for promoting the moral social spiritual and educational welfare of " Welsh people and fostering the study of the Welsh language and of Welsh " history literature music and art."

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By clause 1 of the deed, the expression " Welsh people " means and includes persons of Welsh nationality by birth or descent, born or educated or at any time domiciled in the Principality of Wales or the County of Monmouth.

The settled properties situated in Mecklenburgh Square and in Gray's Inn Road are used for the purposes of the Institute; the houses in Doughty Street, to which this appeal relates, are let by the trustees, and the question for decision relates to the rents of those houses only.

The terms of the trust appear to me to be very vague since different persons have very different views as to how moral, social, spiritual and educational welfare should be promoted. That fact is illustrated by the deed itself. There are many who think that social welfare is promoted by political discussion. All political parties profess that it is by their activities that social welfare is promoted. Yet the settlor expressly provided that the Institute should not be used for the meetings of any political party or for the purposes of any such party.

Clause 5 of the deed, which follows on the clause declaring the trust, provides: " Without prejudice to the generality of the foregoing provisions " the Trustees may use or permit such part of the Settled Properties as is " required to be used as the Institute for all or any of the " purposes therein mentioned, which include the provision of " a meeting place for Welsh " people in London and their friends where they can obtain facilities for social " intercourse study reading rest recreation and refreshment." The word " refreshment " there must be taken to refer to material rather than spiritual or moral refreshment. There are many people who think that material refreshment may be obtained by the use of alcoholic liquors; but that was not the view of the settlor, for the deed expressly stipulates that the trustees shall not permit any alcoholic liquor to be sold or consumed at the Institute.

Among the purposes for which, by clause 5, the Institute may be used are the purposes of the Young Wales Association (London), Ltd., a company registered under the Companies Acts as a company limited by guarantee. It is not suggested that this company, to which I will refer for the sake of brevity as " the Association ", is a company formed for charitable purposes.

The deed gave power to the trustees to appoint a manager of the Institute and enabled them, if they were minded so to do, to appoint the Association as the manager. The trustees in fact have exercised that power and the Association was the manager of the Institute from the date of their appointment by the trustees until May of 1941, when the whole of the settled properties, other than the houses in Doughty Street, were let to the Welsh Services Club.

The Association was registered, according to a booklet which is exhibited to the Case, on 21st March, 1925, to take over the assets and liabilities of a voluntary unincorporated society which had been formed some five years before. The settlor, Sir Howell J. Williams, had always been a generous benefactor of the society. It was he who had provided the money for the acquisition of these settled properties and had erected suitable buildings for the Institute on the properties in Gray's Inn Road and Mecklenburgh Square. The Association, as manager of the Institute, carried on the many varied activities there, which are set out in the booklet to which I have referred, such as public lectures and debates, a music club, and literary and educational classes; the publication of a monthly journal and of the " London Welsh " Annual "; the maintenance of headquarters premises at 11 Mecklenburgh Square, W.C.1., comprising lounge and writing room, library, billiard room, tea and games rooms, etc. Then there are badminton and table tennis clubs.

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There is a reference to frequent excursions to places and events of interest, and dances, whist and bridge drives, and annually a dinner and a garden party. A weekly social and dance was held on Saturday evenings.

The claim made by the trustees, which was for the tax years ending 5th April, 1941, and 5th April, 1942, was rejected by the Commissioners of Inland Revenue and, on appeal, by the Special Commissioners. It is from the decision of the Special Commissioners that the appeal is brought to this Court. The Special Commissioners had the advantage of hearing the evidence of Mr. V. T. Lewis, one of the seven trustees of the deed. He had been secretary of the Association between January, 1937, and December, 1938. After hearing his evidence the Commissioners came to this conclusion: " Under the terms " of the trust deed the purposes of the Institute, to which the rents of the " properties in question held by the trustees have been applied, are wide and " inclusive. While certain of its features conform to the idea of a charity, " we have come to the conclusion that these features are not so dominating, " nor is the general character of the Institute such, as effectively to distinguish " it from an ordinary social club. We are unable to say that it is established " for charitable purposes only, and the application accordingly fails." I see no ground for questioning the conclusion at which the Special Commissioners have arrived. If their decision is open to criticism at all, it seems to me that it might have been expressed in even stronger terms.

Therefore, in my opinion, the appeal fails and must be dismissed with costs.

An appeal having been entered against the decision in the King's Bench Division, the case came before the Court of Appeal (Scott, Lawrence and Morton, L.JJ.) on 14th, 15th and 16th May, 1945, when judgment was reserved. On 13th June, 1945, judgment was given unanimously in favour of the Crown, with costs, confirming the decision of the Court below.

Mr. Cyril L. King, K.C., and Mr. F. N. Bucher appeared as Counsel for the Appellant Trustees, and the Solicitor-General (Sir David Maxwell Fyfe, K.C.), Mr. J. H. Stamp and Mr. Reginald P. Hills (Mr. A. L. Gordon with them) for the Crown.

JUDGMENT

Scott, L.J.—In this case the subject appeals from a judgment of Macnaghten, J., dismissing an appeal from the Special Commissioners, who had affirmed a decision of the Commissioners of Inland Revenue, disallowing a claim for exemption made by certain trustees from Schedule A tax in respect of certain houses in Doughty Street, St. Pancras, on the ground (1) that the trust under which they fell was for charitable purposes, and (2) that the moneys in question were applied for charitable purposes only within Section 37 (1) (*a*) of the Income Tax Act, 1918. Macnaghten, J., upheld the decisions below that the Crown was entitled to tax. I agree with him, but, in deference to the arguments of Mr. King and Mr. Bucher, will state my reasons.

They contended, and logically it was their first point, that there is no finding in the Stated Case on the second issue. I do not take that view. The material paragraph is No. 13. It might have been stated more clearly; indeed, it may be open to criticism for ambiguity; but, in the light of the recitals from the deed and the previous findings of fact in the Case, that paragraph can, and I think should, be read as containing two quite separate

findings, (*a*) of law, interpreting the trust deed, and (*b*) of fact, as to how the income was applied. So read the two findings may, exegetically, be restated thus: " (*a*) Under clause 4 of the deed the purpose of the trust was " to establish and maintain an Institute to be called ' The London Welsh " ' Association ' (the name of the company limited by guarantee, which in " the relevant years managed the Institute). The function so entrusted to " the Institute pursuant to the deed was (i), generally, to create and run a " centre in London for promoting the moral, social, spiritual and educational " welfare of Welsh people resident in or visiting London, ' Welsh people ' " being defined as including not only persons of Welsh birth and descent, " but anybody ' educated or at any time domiciled in Wales '; and (ii), " particularly, to prosecute all or any of a long list of puposes lettered " (A) to (G). Those purposes include many which are not charitable, and " the dominant purpose of the trust is that the Institute should be main- " tained and used as an ordinary social club. (*b*) Although some purposes " of the trust were charitable, it is not the fact that the income from the " houses in question was applied *only* to its charitable purposes, as required " by Section 37 (1) (*a*) of the Income Tax Act, 1918; on the contrary it " was applied mainly for the purpose of running the Institute as a social " club." Assuming that my exegesis of paragraph 13 of the Case is a fair interpretation of it, it follows, first, that there is no error of law, for the Commissioners have construed the trust deed correctly; and secondly, that there is a plain finding of fact that the income in question was not applied to charitable purposes only; and as there was evidence before the Special Commissioners upon which they could properly so find, the ambiguity of paragraph 13 is not such as to afford ground for either allowing the appeal or sending the case back.

The main argument for the Appellants was that the trust fell within the fourth of Lord Macnaghten's categories in *Pemsel's* case, [1891] A.C. 531, at page 583; 3 T.C. 53, at page 96, viz., for purposes beneficial to the community, not falling under the heads of the relief of poverty, the advancement of education, or the advancement of religion. Their submission was that it was " a public trust for the benefit of a definite community ", viz., the Welsh community. They relied on *Verge* v. *Somerville*, [1924] A.C. 496, at page 503, as showing that poverty was not an essential attribute of such a community; and that a particular class of persons, like soldiers returning to New South Wales after the last war, may constitute such a community (*ibid*, at page 506). But there are two fallacies in this argument. To constitute such a charity there must be a purely public trust for the benefit of the definite community to be benefited and not a trust for the benefit of individuals; and it must be of such a general kind as will permit of the Court making a scheme for its administration, that being the only way in which the community can enjoy such a public charity—see In re *Smith, Public Trustee* v. *Smith*, [1932] 1 Ch. 153, at pages 171/2 per Lawrence, L. J., and pages 174/5 per Romer, L.J., and the full examination there made of the decided cases: and In re *Compton, Powell* v. *Compton*, [1945] 1 Ch. 123, per Lord Greene, M.R.

In the present case it is, in my view, impossible to say that there was any definite community such as could confer a public quality on the purposes of the trust. The definition of Welsh people in clause 1 of the trust deed includes persons of any nationality who have ever been " educated " or at any time " domiciled " in Wales; and clause 4 directs the application of the trust moneys to the establishment and maintenance of the Institute as a

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meeting place in London for anybody and everybody falling within that very wide definition who might happen to be " resident in or visiting London ", with a view to creating a centre for (*inter alia*) their social welfare. Clause 5 carries this special aspect of the Institute still further away from a public charity by several of its specific directions as to the use of the Institute, in particular paragraph (A): " For providing a meeting place for Welsh people " in London and their friends where they can obtain facilities for social " intercourse study reading rest recreation and refreshment "; and paragraph (E): " As a hostel for the accommodation of Welsh people in London." These specific provisions suffice of themselves to justify the conclusion of the Commissioners, that an ordinary social club was, to say the least, a main object of the Institute. They thought it the Institute's dominant function; but, even if it was only one function, it is enough to prevent the trust being, in the eye of the law, a " public charity ", or for the " benefit " of a defined community." There is no way in which a Court of Equity could prevent the London Welsh Association, Ltd., in their capacity of managers of the Institute, from using the trust moneys to carry out the non-charitable functions of the Institute.

Lastly, the specific condition laid down in Section 37 (1) must be truly satisfied if exemption from tax is to be claimed, viz., that the rents and profits of the trust houses must be applied only to charitable purposes. On that issue the Commissioners were entitled to draw their own inferences from the evidence they heard in the light of the provisions of the trust to which I have referred. It is plainly impossible to say that there was no evidence to support their finding that that condition was not satisfied.

Since writing this judgment I have had the advantage of reading those of my brethren. If, as Morton, L.J., thinks, paragraph 13 of the Case ought to be read as containing no finding on that issue, I should subscribe to his conclusion. In other respects I agree with both their judgments.

The appeal must be dismissed with costs.

Lawrence, L.J.—I am of the same opinion.

It is clear from the authorities cited by Lord Greene, M.R., in In re *Compton, Powell* v. *Compton*, [1945] 1 Ch. 123, and from the speeches in the House of Lords in *Keren* v. *Commissioners of Inland Revenue*, 17 T.C. 27, that the law recognizes no purpose as charitable unless it is of a public character, that is to say, for the benefit of the community or an appreciably important section of the community, and not merely for the benefit of private individuals or a fluctuating body of private individuals, and unless the section of the community is sufficiently defined and identifiable by some common quality of a public nature. These principles apply not only to the fourth class in Lord Macnaghten's statement in *Pemsel's* case, [1891] A.C. 531, at page 583; 3 T.C. 53, at page 96, but to all charitable gifts.

The first question in this case is whether the beneficiaries designated in the trust deed of 12th October, 1937, constitute a sufficiently defined class of the community, or are a fluctuating body of private individuals. There is, perhaps, an ambiguity in the phrase, a fluctuating body of private individuals, for, in one sense, the freemen of Saltash, or the inhabitants of Falkirk, or the native inhabitants of Dacca, or the schoolchildren of Turton, might have been said to be a fluctuating body of private individuals. But in each case they possessed the common quality of living in or being freemen of a specified place, and were, therefore, an easily identifiable section of the public as

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opposed to the classes of private individuals concerned in *Compton's* case, [1945] 1 Ch. 123; in In re *Drummond*, [1914] 2 Ch. 90, and in *Wernher's Trust* v. *Commissioners of Inland Revenue*, 21 T.C. 137.

In the present case there is, in my opinion, no such common quality in the class sought to be benefited, nor is the class easily identifiable. The speech of Lord Tomlin in the House of Lords in *Keren* v. *Commissioners of Inland Revenue*, 17 T.C., at page 56, in which the other noble Lords concurred, makes it clear that the class must be sufficiently defined and that, if its definition is vague, it cannot be the object of a charitable trust. There the class was Jews who were to be settled in Palestine, Syria and Turkey, and it was pointed out that Jews might come from any part of the world, and, although the matter was not specifically referred to, might carry little or much Jewish blood. So, in the present case, the class to be benefited includes anyone of Welsh descent who visits London, and anyone who has been educated in Wales. Welsh descent may, it appears to me, mean a person who had a Welsh great-grandmother, and obviously anyone may have been educated in Wales. There is really no common quality which unites the potential beneficiaries into a class except a vague connection with Wales, either through local residence or education, or through an unspecified proportion of Welsh blood. It is scarcely possible to imagine a class more vague and ill-defined, and, in my opinion, it is impossible to hold that a trust for such beneficiaries is a good charitable trust.

For these reasons I think the appeal should be dismissed.

Morton, L.J.—In spite of the ingenious argument of Counsel for the Appellants, I think that the decision of Macnaghten, J., affirming the Special Commissioners, was clearly right. I need not restate the facts, which are fully set out in the Stated Case, and are summarised in the judgment of Macnaghten, J.

Two questions are before us for decision. (1) Were Nos. 29, 30 and 31 Doughty Street vested in the Appellants at the relevant time for " charitable " purposes " within the meaning of Section 37 (1) (*a*) of the Income Tax Act of 1918? Mr. King conceded that, in view of certain authorities, these words must be read as meaning " for charitable purposes only." (2) If so, were the sums now in question " applied to charitable purposes only " within the meaning of the same Sub-section? In my view, the former question must be answered in the negative. The purpose for which those properties were held by the Appellants is stated as follows in clause 4 of the deed of 12th October, 1937, which established the trust: " For the purpose of establishing " and maintaining an Institute and meeting place in London to be known " as ' The London Welsh Association ' (hereinafter called ' the Institute ') " for the benefit of Welsh people resident in or near or visiting London with " a view to creating a centre in London for promoting the moral social " spiritual and educational welfare of Welsh people and fostering the study " of the Welsh language and of Welsh history literature music and art." The expression " Welsh people " is defined as follows in the deed: " The " expression ' Welsh people ' shall mean and include persons of Welsh " nationality by birth or descent or born or educated or at any time domiciled " in the Principality of Wales or the County of Monmouth." In this definition I do not think that the word " domiciled " should be given its strict legal meaning; I think it refers merely to residence. It is plain that persons who have no Welsh blood in their veins, and who may live in any part of the world, would come within the class of persons to be benefited. Thus, a

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native of Africa who had been educated in Wales, and was spending a few days in or near London, would be within the class. So, I think, would be a South Sea Islander who had lived for a year or so in Wales, and examples of a less extreme nature might be multiplied. The members of this class have no common place of residence, and have not even a common nationality.

Turning again to clause 4, I think it falls into two parts. The first part defines the purpose for which the settled properties are to be held; the second part, beginning with the words " with a view ", states the end which the settlor hoped to achieve by establishing and maintaining the Institute. In order to ascertain whether the purpose of establishing and maintaining the Institute is a charitable purpose, I turn to clause 5 of the deed to see how the Institute may be used. That clause begins: " Without prejudice to the " generality of the foregoing provisions the Trustees may use or permit such " part of the Settled Properties as is required to be used as the Institute " for all or any of the following purposes ". Then is set out a number of purposes, which include the following: " (A) For providing a meeting place " for Welsh people in London and their friends where they can obtain facilities " for social intercourse study reading rest recreation and refreshment. (B) " For meetings concerts lectures and other forms of instruction discussion or " entertainment especially in relation to subjects connected with the Welsh " language and Welsh history literature music and art. (E) As a hostel for " the accommodation of Welsh people in London."

From the passages quoted it is, I think, quite apparent that the whole of the rents and profits of Nos. 29, 30 and 31 Doughty Street might be applied for the maintenance of an institute which was to be used simply as a social club for the benefit of persons resident in or near London, or visiting London, who came within the class of " Welsh people " as defined in the deed. It is true that there are other purposes specified in clause 5 of the deed, which are of an educational character, but the words " all or any " in the passage already quoted make it plain that neither the trustees nor the managers of the Institute would be bound to apply the funds for such purposes, or to arrange for the Institute to be used for such purposes. The result is that, even if I assume in favour of the Appellants that there is no finding of fact by the Special Commissioners which is fatal to their case, the property in question is not vested in them as trustees for charitable purposes only. The running of a social club for the benefit of such a class of persons as is described in the deed is far removed from any purpose which has been held to be charitable in any decided case. I do not think it is necessary to examine in detail the cases which were cited to us. If the construction which I placed upon the deed is the right construction, it is plain that the whole of the rents and profits of the Doughty Street properties might be applied for purposes which were not charitable, without travelling outside the limits of the purposes set out in the deed of 12th October, 1937.

Having regard to the view which I have formed on question (1), question (2) does not arise; but I think that it is abundantly clear that the sums which the Appellants seek to free from Schedule A tax were not in fact applied to charitable purposes only. This appears from paragraph 11 of the Case, which I need not reproduce in this judgment. The Special Commissioners came to the conclusion that the general character of the Institute was not such as effectively to distinguish it from an ordinary social club. Assuming, in favour of the Appellants, that this conclusion is open to review by this Court, I am not at all inclined to dissent from it.

I agree that the appeal fails and must be dismissed with costs.

Mr. Bucher.—I agree that your Lordships' decision sets the impress of finality upon the matters before your Lordships, but would your Lordships think this is a proper case to grant leave to appeal to the House of Lords?

Scott, L.J.—Why? You have concurrent findings all the way through.

Mr. Bucher.—That is so, but in one way in which your Lordship has expressed the Court's view, the matter depends upon the resolution of what your Lordship called the ambiguity in the Special Commissioners' finding.

Scott, L.J.—Do not depend on that because my two brethren, particularly Morton, L.J., in the reasons stated by him, arrived at the same conclusion as I did without my interpretation.

Mr. Bucher.—I agree, with respect. I was referring to your Lordship's judgment on that point. Apart from that point, the argument which was addressed to the Court depended upon, I think I may say, a novel extension of the interpretation to be put upon the way in which one ought to define a section of the community. It is a departure on that part of the argument from the line of cases, beginning with the case of *Goodman* v. *Mayor of Saltash* (1882), 7 App. Cas. 633, and so on, to a more elastic conception of what may well be a section of the community. I submit to your Lordships that that is a new question before the Court, and I ask your Lordships, with respect, for leave, if my clients be advised, to have that question considered.

Scott, L.J.—We thought we were following a well-trodden path and not making a new cut through the jungle, as you suggest.

Mr. Bucher.—I think, with respect, one of the arguments that was put to your Lordships did involve a departure from the well-trodden path of the *Mayor of Saltash* and residence fixing the geographical area. Your Lordships were pleased to listen to a lengthy argument on that point, and I do submit that that point is one of general importance.

Scott, L.J.—The general subject of charities is one of importance, but whether this particular appeal raises a legal issue of importance, I very much doubt, for the reasons I have given.

(*The Court conferred.*)

Scott, L.J.—You are representing the Revenue.

Mr. Gordon.—As regards the question of leave to appeal, it must be a matter for your Lordships.

Scott, L.J.—Your usual practice is to leave it to the Court.

Mr. Gordon.—Yes, my Lord.

Scott, L.J.—You can take leave, Mr. Bucher.

Mr. Bucher.—If your Lordship pleases.

An appeal having been entered against the decision in the Court of Appeal, the case came before the House of Lords (Viscount Simon and Lords Wright, Porter, Simonds and Normand) on 28th and 30th January, 1947, when judgment was reserved. On 21st March, 1947, judgment was given unanimously in favour of the Crown, with costs, confirming the decision of the Court below.

Mr. Cyril L. King, K.C., and Mr. F. N. Bucher appeared as Counsel for the Appellant Trustees, and Sir David Maxwell Fyfe, K.C., Mr. J. H. Stamp and Mr. Reginald P. Hills for the Crown.

JUDGMENT

Viscount Simon.—My Lords, I have had the great advantage of reading in print and of studying the exhaustive opinion prepared in this case by my noble and learned friend Lord Simonds. I agree with it, and need say no more except that I move that the appeal be dismissed with costs.

Lord Wright.—My Lords, I also have had the advantage of studying the opinion about to be delivered by my noble and learned friend Lord Simonds. I agree with it, and have nothing to add.

Lord Simonds.—My Lords, my noble and learned friend **Lord Porter** has asked me to say that he concurs in the opinion which I am about to deliver.

My Lords, the question raised in this appeal is whether under a trust deed dated 12th October, 1937, and made between Howell J. Williams, Ltd. as trustees of the one part and Sir Howell Jones Williams, therein called " the " Settlor ", of the other part, certain properties were vested in the trustees for charitable purposes within the meaning of Section 37(1)(*a*) of the Income Tax Act, 1918, and whether the rents of those properties were in the years 1940–41 and 1941–42 applied by them to charitable purposes only.

Section 37(1) of the Income Tax Act, 1918, is as follows: " 37.—(1) " Exemption shall be granted—(*a*) from tax under Schedule A in respect of the " rents and profits of any lands, tenements, hereditaments, or heritages " belonging to any hospital, public school or almshouse, or vested in trustees " for charitable purposes, so far as the same are applied to charitable purposes " only ".

I will now state the relevant provisions of the trust deed. It begins by reciting that it is supplemental to a transfer of 16th January, 1930, whereby certain freehold property specified in the schedule (together with other property) was transferred to the trustees. This property consisted of certain premises in the Gray's Inn Road in the parish of St. Pancras, and No. 11 Mecklenburgh Square, and Nos. 29, 30 and 31 Doughty Street in the same parish.

It further recites that the property had been purchased by the trustees out of moneys provided by the settlor, and that the Young Wales Association (London), Ltd. (thereinafter called " the Association ") had been incorporated on 21st March, 1925, with (*inter alia*) the following objects, namely: (i) to promote Welsh interests in London and to provide means of social intercourse between persons of Welsh nationality, birth, domicile, education or sympathies; (ii) to consider and discuss all questions affecting Welsh interests; (iii) to foster the study of the Welsh language and to procure the delivery of lectures on subjects connected with Welsh history, literature, music and art; (iv) to form and maintain a library of periodical, historical and other literature in the Welsh language or relating to Wales; and, finally, that the property had for some time past been and was then occupied, used and enjoyed by the Association with the consent of the settlor for the purposes of the Association.

I come to the operative part of the deed. Clause 1 contains an important definition: " The expression ' Welsh people ' shall mean and include persons of " Welsh nationality by birth or descent or born or educated or at any time " domiciled in the Principality of Wales or the County of Monmouth." Clauses 2 and 3 I can pass over. Clauses 4 and 5 cannot fairly be summarised, and I state them *in extenso*: " 4. The Trustees shall hold the Settled Properties and " the Endowment Fund for the purpose of establishing and maintaining an " Institute and meeting place in London to be known as ' The London Welsh " ' Association ' (hereinafter called ' the Institute ') for the benefit of Welsh " people resident in or near or visiting London with a view to creating a centre

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" in London for promoting the moral social spiritual and educational welfare of " Welsh people and fostering the study of the Welsh language and of Welsh " history literature music and art."

" 5. Without prejudice to the generality of the foregoing provisions the " Trustees may use or permit such part of the Settled Properties as is required " to be used as the Institute for all or any of the following purposes :—

" (A) For providing a meeting place for Welsh people in London and their " friends where they can obtain facilities for social intercourse study " reading rest recreation and refreshment.

" (B) For meetings concerts lectures and other forms of instruction " discussion or entertainment especially in relation to subjects " connected with the Welsh language and Welsh history literature " music and art.

" (C) For any educational purposes connected with the Welsh language or " Welsh subjects or likely to be of value or interest to Welsh people.

" (D) For establishing and maintaining a library of periodical historical " and other literature in the Welsh language or relating to Wales or " which is likely to be of use to Welsh people.

" (E) As a hostel for the accommodation of Welsh people in London.

" (F) For any of the purposes of the Association or of any similar " association which may be formed for the benefit of Welsh people in " London and which purposes may be within the general scope of the " Trusts declared in Clause 4 hereof.

" (G) Generally for such other purposes being charitable and for the " benefit of Welsh people as the Trustees may from time to time think " fit Provided always that the Trustees shall not permit any alcoholic " liquor to be sold or consumed on any part of the Settled Properties " for the time being occupied or used for the purposes of the " Institute."

Clause 9 will be found to be important, and I set out the substantive part of it : " 9. The Trustees shall apply the income arising from the Endowment " Fund and any rents and profits arising from the Settled Properties and any " other profits income or contributions which may be received by the Trustees " in carrying on the Institute and otherwise for the maintenance repair and " insurance of the Settled Properties and in payment of the rates and other " outgoings and towards the cost of maintaining equipping and using the " Settled Properties for the purposes of the Institute and generally for carrying " into effect all or any of the trusts of this Deed ".

Clause 10 provided that the Institute should not be used for meetings of any political party or for the purposes of any such party, and that no part of the property, capital or income for the time being subject to the trusts thereof should at any time be used or applied for any such purposes or for any other purposes not being charitable, with a proviso that that prohibition should not prevent any application of money or property for purposes necessarily incidental to carrying out the charitable trusts of the deed.

Clause 13 authorised the trustees to delegate their power to carry on the Institute by appointing managers, and clause 14 to exercise that power by appointing the Association to act as managers of the Institute.

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I do not think it necessary to refer to any other provisions of the deed. On the day following its execution Howell J. Williams, Ltd. resigned the trusteeship of the deed, and in their place seven individuals (including the settlor) were appointed trustees. The survivors of them are the present Appellants.

The relevant facts as found by the Commissioners for the Special Purposes of the Income Tax Acts are these. I take them from the Case Stated, which will at the same time conveniently show the nature of the claim which is the subject of appeal to this House.

Paragraph 4 of the Case states that the trust property had always been maintained as two blocks; that the first block (thereinafter referred to as " the " Institute block ") consisted of property in Gray's Inn Road and Mecklenburgh Square which was adapted for use as an Institute in accordance with the trusts of the deed; that the second block, consisting of 29, 30 and 31 Doughty Street, was let out to tenants; that the first block only—and not, as incorrectly indicated in the recitals to the deed, the whole of the trust property—was until May, 1941, occupied by the Young Wales Association (London), Ltd. which later changed its name to London Welsh Association, Ltd., and was thereinafter referred to as " the Association."

In the next paragraph of the Case the claim is stated. I think it worth while to set it out: " The trustees were not on this claim contending that this " Association was established for charitable purposes only. The claim before " us was that not the Association but the trustees were so established; that in " applying the rents of 29, 30 and 31 Doughty Street to the purposes of the " before-mentioned Association (which they claimed as an application of income " of the trust under clause 9 of the trust deed), they had applied the same to " charitable purposes only, and that, consequently, they were entitled to " exemption from Income Tax, Schedule A, in respect of the rents of the said " properties."

From paragraph 7 of the Case it appears that the trustees, in exercise of their powers under the deed, allowed the Association to occupy the Institute block and to act as managers of the Institute, and that the Association so acted until May, 1941, and that before that date they made two donations to the Association for the purposes of the Institute, but that after that date the Association had been unable to continue in occupation of the premises, which had been let to the Welsh Services Club, and, similarly, after that date no further donations had been made.

In paragraph 11 of the Case there is a summary of the evidence given before the Commissioners by a Mr. V. J. Lewis, one of the trustees of the deed, and at one time secretary of the Association. Since the question raised in this appeal appears in one aspect to turn on findings of fact, I cannot omit a reference to this evidence. It appears that Mr. Lewis and two of his co-trustees met and considered what should be done with the funds which they held under the deed, and they decided to make two donations to the Institute. They considered that they were carrying out the purposes of the deed, because it was necessary that the Institute should be maintained. The Association were running the headquarters premises at a loss, although making a profit on their other activities, and he and his co-trustees knew that any donation which they made would be paid into the headquarters account, from which the activities of the Institute were financed. This was one of two accounts, the other being the general account. On the headquarters account there was a debit balance. On the general account there was a credit balance; into this account the subscriptions of members of the Association were paid, and also donations from another distinct trust, and out of it was paid printing, postage and secretarial

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expenses, Corporation Duty, etc. The Association did not keep separate accounts as to the expenditure of the donations. The objects, said Mr. Lewis, to which the donations were intended to be devoted were numbers 1, 4, 5, part of 7, and 8 and 11 of the activities of the Association, as set out in its booklet which was annexed to the Case. These activities are there described as follows :—

"1. Public lectures and debates, a Music Club, and literary and "educational classes.

"4. The maintenance of Headquarters Premises at 11 Mecklenburgh "Square, W.C.1, comprising Lounge and Writing Room, Library (where "current Welsh and English periodicals and newspapers may be found), "*Billiard Room, Tea and Games Rooms, etc.*, available for the use of Head-"quarters Members of the Association, and of all Donors and Subscribers.

"The Headquarters Premises and in particular the London Welsh Hall "are increasingly becoming the meeting place of the committees and "functions of the various London Welsh societies and other organisations.

"5. *Badminton and Table Tennis Clubs* are maintained in connection "with the Headquarters Premises.

"7. *Dances, whist and bridge drives,* and annually a dinner and a "garden party.

"8. A weekly *Social and Dance* is held for headquarters members in "the London Welsh Hall, on Saturday evenings. The charge made for "admission is only 6*d*. (ordinary members, and visitors on the introduction "of a member, may obtain admission at 2/-) : a dance band is provided, "and the popularity of these weekly functions among the younger members "of the London Welsh community is undoubted.

"11. The Headquarters office of the Association serves in many ways "as a Central Information Bureau for London Welsh people and visitors "to the metropolis."

Mr. Lewis said that in making these donations the trustees regarded themselves as contributing to dances, whist and bridge drives held at the Institute, and as part of the activities taking place there and not to any such activities held elsewhere. A prominent part of the activities of the Institute consisted of lectures, debates, music club, and literary and educational classes. Classes were held in the Welsh language, history and literature. The trustees did not contribute towards the Theatre Guild referred to in No. 2 of the list of the activities.

I must assume that the Commissioners accepted as facts the statements which they set out without comment in this Case. The Commissioners then state (as should always be done with clearness and particularity) the rival contentions of the trustees and the Crown. I have referred earlier in this opinion to the claim made by the trustees. Of the Crown it is only said that the contention of the trustees was resisted on its behalf.

The decision of the Commissioners was as follows : "Under the terms of the "trust deed the purposes of the Institute, to which the rents of the properties "in question held by the trustees have been applied, are wide and inclusive. "While certain of its features conform to the idea of a charity, we have come to "the conclusion that these features are not so dominating, nor is the general "character of the Institute such, as effectively to distinguish it from an

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" ordinary social club. We are unable to say that it is established for charitable " purposes only, and the application accordingly fails."

I have thought it necessary to state the facts at this length because it has been a matter of some controversy what the Commissioners really decided. The issues being two-fold, (*a*) whether the trust property was vested in the trustees for charitable purposes, and (*b*) whether the rents were applied for charitable purposes only, it is at least arguable that the Commissioners, notwithstanding that the facts stated in the Case related mainly to the second issue, yet decided only the first issue. It is not clear what view was taken upon this point by Macnaghten, J., before whom came the appeal from the Commissioners. He found it sufficient to say that he saw no ground for questioning their conclusion, adding that, if their decision was open to criticism at all, it was that it might have been expressed in even stronger terms.

When the matter came before the Court of Appeal the confusion was made apparent, and there was some difference of opinion between the members of that Court, Scott, L.J., thinking it possible to read into the decision of the Commissioners a plain finding of fact that the income in question was not applied to charitable purposes only, while Morton, L.J. (if I read his judgment correctly), was prepared to assume that there was no finding of fact fatal to the Appellants' case.

In these circumstances, while I cannot entertain any doubt that upon the facts stated in the Case it was not open to the Commissioners to come to any other conclusion on the second issue than that the rents in question were not applied for charitable purposes only, I think it right also to examine the question whether, irrespective of the application of the rents in any year, the trust property itself is vested in the Appellants for charitable purposes. That this expression means " for charitable purposes only " is conceded by the Appellants.

My Lords, the claim of the Appellants that the property is vested in them for charitable purposes is based on these contentions: (*a*) that the dominant purpose of the trust is the fostering of Welsh culture, which is a purpose beneficial to the community composed of the people of the United Kingdom; (*b*) that the purpose aforesaid is beneficial to the community composed of the people of the Principality of Wales and the County of Monmouth, which is an integral part of the United Kingdom and in itself constitutes a political body settled in a particular territorial area, and (*c*) because the maintenance of the Institute (the expressed method of effectuating the purpose aforesaid) is itself a purpose beneficial to a section of the British community which is determined by reference to impersonal qualifications (namely persons with Welsh connections who are resident in or near or visiting London), and is not a selection of private individuals chosen on account of personal qualifications. I have taken this statement of the Appellants' contentions from the formal reasons in their written case, because in them so clearly appears the fallacious argument upon which, in this and other cases which it has been my fortune to hear, an attempt has been made to establish the charitable character of a trust.

My Lords, there are, I think, two propositions which must ever be borne in mind in any case in which the question is whether a trust is charitable. The first is that it is still the general law that a trust is not charitable and entitled to the privileges which charity confers, unless it is within the spirit and intendment of the preamble to the Statute of Elizabeth (43 Eliz., c. 4), which is expressly preserved by Section 13 (2) of the Mortmain and Charitable Uses Act, 1888. The second is that the classification of charity in its legal sense into four principal divisions by Lord Macnaghten in *Pemsel's* case, [1891] A.C. 531, at page 583 (3 T.C. 53, at page 96), must always be read subject to the qualification

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appearing in the judgment of Lindley, L.J., in In re *Macduff*, [1896] 2 Ch. 451, at page 466 : " Now Sir Samuel Romilly did not mean, and I am certain Lord " Macnaghten did not mean, to say that every object of public general utility " must necessarily be a charity. Some may be, and some may not be." This observation has been expanded by Lord Cave, L.C., in this House in these words : " Lord Macnaghten did not mean that all trusts for purposes beneficial to the " community are charitable, but that there were certain charitable trusts which " fell within that category ; and accordingly to argue that because a trust is for " a purpose beneficial to the community it is therefore a charitable trust is to " turn round his sentence and to give it a different meaning. So here it is not " enough to say that the trust in question is for public purposes beneficial to " the community or for the public welfare ; you must also show it to be a " charitable trust "—see *Attorney-General* v. *National Provincial Bank*, [1924] A.C. 262, at page 265.

But it is just because the purpose of the trust deed in this case is said to be beneficial to the community or a section of the community, and for no other reason, that its charitable character is asserted. It is not alleged that the trust is (*a*) for the benefit of the community and (*b*) beneficial in a way which the law regards as charitable. Therefore, as it seems to me, in its mere statement the claim is imperfect and must fail.

My Lords, the cases in which the question of charity has come before the Courts are legion, and no one who is versed in them will pretend that all the decisions, even of the highest authority, are easy to reconcile, but I will venture to refer to one or two of them to make good the importance of my two general propositions. In *Houston* v. *Burns*, [1918] A.C. 337, the question was as to the validity of a gift " for such public, benevolent, or charitable purposes in " connection with the parish of Lesmahagow or the neighbourhood " as might be thought proper. This was a Scotch case, but upon the point now under consideration there is no difference between English and Scotch law. It was argued that the limitation of the purpose to a particular locality was sufficient to validate the gift, that is to say, though purposes beneficial to the community might fail, yet purposes beneficial to a localised section of the community were charitable. That argument was rejected by this House. If the purposes are not charitable *per se*, the localisation of them will not make them charitable. It is noticeable that Lord Finlay, L.C., at page 341, expressly overrules a decision or dictum of Lord Romilly to the contrary effect in *Dolan* v. *Macdermot*, L.R. 5 Eq. 60.

Next I will refer to a case in the Privy Council which is the more valuable because Lord Macnaghten himself delivered the judgment of the Board. In that case the question was of the validity of a residuary gift " to the Roman " Catholic Archbishop of Brisbane and his successors to be used and expended " wholly or in part as such Archbishop may judge most conducive to the good " of religion in this diocese." What could have been easier than to say that such a trust was beneficial to the community, and moreover to a section of the community sufficiently defined by a reference to the diocese, and was therefore charitable ? Yet the only argument was that the benefit to the community was of a character which fell within the preamble to the Statute of Elizabeth, that is, for religious purposes, and therefore was charitable. And it is to be observed that this contention was rejected on the narrow ground that the terms of the bequest were not identical with religious purposes. " The language of the " bequest ", said Lord Macnaghten, " (to use Lord Langdale's words (1))

(1) Baker *v.* Sutton (1836), 1 Keen 224, at p. 233.

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" would be ' open to such latitude of construction as to raise no trust which a " ' Court of Equity could carry into execution ' "—*Dunne* v. *Byrne*, [1912] A.C. 407, at page 411.

One more decision out of many to the same effect may be cited. In *Farley* v. *Westminster Bank*, [1939] A.C. 430, a testatrix had bequeathed the residue of her estate in part to the respective vicars and churchwardens of two named churches " for parish work ". Could it be doubted that the purpose of the gift was beneficial to the community ? It could fairly be described in the very words in which the Appellants here assert the charitable nature of their trust. Yet the gift failed. It was, in the words of Lord Russell of Killowen (at page 437), " for the assistance and furtherance of those various activities connected with " the parish church which are to be found, I believe, in every parish ". It would be unduly cynical to say that that is not a purpose beneficial to the community. Yet it failed. And it failed because it did not fall within the spirit and intendment of the preamble to the Statute of Elizabeth.

My Lords, I must mention another aspect of this case, which was discussed in the Court of Appeal and in the argument at your Lordships' bar. It is not expressly stated in the preamble to the Statute, but it was established in the Court of Chancery, and, so far as I am aware, the principle has been consistently maintained, that a trust in order to be charitable must be of a public character. It must not be merely for the benefit of particular private individuals ; if it is, it will not be in law a charity, though the benefit taken by those individuals is of the very character stated in the preamble. The rule is thus stated by Lord Wrenbury in *Verge* v. *Somerville*, [1924] A.C. 496, at page 499 : " To ascertain " whether a gift constitutes a valid charitable trust so as to escape being void " on the ground of perpetuity, a first inquiry must be whether it is public— " whether it is for the benefit of the community or of an appreciably important " class of the community. The inhabitants of a parish or town, or any " particular class of such inhabitants, may, for instance, be the objects of such " a gift, but private individuals, or a fluctuating body of private individuals, " cannot." It is, I think, obvious that this rule, necessary as it is, must often be difficult of application, and so the Courts have found. Fortunately, perhaps, though Lord Wrenbury put it first, the question does not arise at all if the purpose of the gift, whether for the benefit of a class of inhabitants or of a fluctuating body of private individuals, is not itself charitable. I may however refer to a recent case in this House which in some aspects resembles the present case. In *Keren Kayemeth Le Jisroel, Ltd.* v. *Commissioners of Inland Revenue*, [1932] A.C. 650 (17 T.C. 27), a company had been formed which had as its main object (to put it shortly) the purchase of land in Palestine, Syria, or other parts of Turkey in Asia and the Peninsula of Sinai for the purpose of settling Jews on such lands. In its memorandum it took numerous other powers which were to be exercised only in such a way as should, in the opinion of the company, be conducive to the attainment of the primary object. No part of the income of the company was distributable among its members. It was urged that the company was established for charitable purposes for numerous reasons, with only one of which I will trouble your Lordships, namely, that it was established for the benefit of the community or of a section of the community, namely, Jews, whether the association was for the benefit of Jews all over the world or of the Jews repatriated in the Promised Land. Lord Tomlin, dealing with the argument that I have just mentioned upon the footing that, if benefit to " a " community " could be established, the purpose might be charitable, proceeded to examine the problem in that aspect and sought to identify the community. He failed to do so, finding it neither in the community of all Jews

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throughout the world nor in that of the Jews in the region prescribed for settlement (1). It is perhaps unnecessary to pursue the matter. Each case must be judged on its own facts, and the dividing line is not easily drawn. But the difficulty of finding the community in the present case, when the definition of " Welsh people " in the trust deed is remembered, would not, I think, be less than that of finding the community of Jews in *Keren's* case.

At an early stage in this opinion I said that cases on the law of charity are not easy to reconcile. I would not be taken as suggesting that there is any doubt about the present case. I agree with the learned Judges of the Court of Appeal that, upon the construction which they have adopted of the trust deed—and it is the only possible construction—the property is not vested in the Appellants for charitable purposes only. It is clear, as I have already said, that they have not applied the income for charitable purposes only, and I do not doubt that they have applied it strictly in accordance with their trust. " Matters ", said Lord Russell of Killowen (then Russell, L.J.), " have been " stretched in favour of charities almost to bursting point "—see In re *Grove-Grady*, [1929] 1 Ch. 557, at page 582. That point would be reached if your Lordships held that this trust deed has a purpose which falls within the spirit and intendment of the preamble. It clearly does not, and, if it does not, let the community be what you will, let the purpose be as beneficial as you like, here is no charity.

My Lords, it would not be right for me, in a case which raises in such a general form the broad question of charitable trusts, to ignore a line of authorities relied on by the Appellants. More accurately, I think, there are two lines of authorities which are apt to converge and cross each other. There is, first, the class of case of which In re *Smith*, [1932] 1 Ch. 153, is typical. In that case the testator gave his residuary estate " unto my country England for— " own use and benefit absolutely " (*sic*). This was held to be a good charitable trust. Here no particular purpose or benefit was defined. Secondly, there is the class of case, of which *Goodman* v. *Mayor of Saltash*, 7 App. Cas. 633, may be regarded as the prototype. There Lord Selborne, L.C., at page 642, used the words cited so often in the reports : " A gift subject to a condition or trust for " the benefit of the inhabitants of a parish or town, or of any particular class of " such inhabitants, is (as I understand the law) a charitable trust ". In the one class of case there is no particularity of benefit and the widest range of beneficiary, in the other the beneficiaries are localised and the nature of the benefit defined. How are these cases to be reconciled with the decisions of this House to which I earlier referred ?

In the last edition of Tudor on Charities, at page 45, it is said : " It is hard " to avoid the conclusion that the foregoing cases, which establish that gifts " for the benefit of particular districts are charitable, are anomalous. They " cannot be related to the Statute of Elizabeth, and they logically involve the " proposition that purposes which are not charitable in the world at large are " charitable if their operation is confined to a specified locality, for, public or " benevolent purposes are not charitable, while there is nothing to prevent the " trustees of a fund given for the benefit of a parish from spending it upon " public or benevolent purposes, and yet the gift of such a fund is charitable. " Nevertheless, a gift for public purposes in a particular parish is not charitable." Your Lordships may think that this sounds like a cry of despair, and, in truth, there is some ground for it. But I would suggest that it is possible to justify as charitable a gift to " my country England " upon the ground that, where no

(1) 17 T.C., at p. 56.

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purpose is defined, a charitable purpose is implicit in the context; it is at least not excluded by the express prescription of "public" purposes. Where the gift is localised but the nature of the benefit is defined, no reconciliation is possible except upon the assumption that the particular purpose was in each case regarded as falling within the spirit and intendment of the preamble to the Statute of Elizabeth, though I find it difficult to ascribe this quality to the benefit taken by the freemen of Saltash. If this affords no solution of the problem, I can only invite your Lordships to maintain the principles which have consistently been asserted in this House over the last fifty years in this difficult and intricate branch of the law.

I would dismiss this appeal.

Lord Normand.—I respectfully agree with my noble and learned friend Lord Simonds. Discordant decisions have resulted from the occasional failure to keep in mind the two propositions which my Lord has now re-asserted, and from the tacit assumption that all trusts beneficial to the public at large or to some section of it are entitled by a benevolent construction to the special privileges of charitable trusts. Yet the line between charitable and non-charitable trusts is sometimes difficult to draw, even when correct principles are applied, particularly where the claim is made that the trust is charitable because its purpose is the furtherance of the moral improvement of the community. The decision in *Commissioners of Inland Revenue* v. *Falkirk Temperance Café Trust*, 1927 S.C. 261 (11 T.C. 353), a case which has some resemblance to the present, must, I think, rest on the ground that the predominant purpose of the trust was the moral improvement by means of temperance of the inhabitants of Falkirk, and that the cafés and temperance hotel provided by the trust were so subordinated to the predominant purpose that it was possible to distinguish them from an ordinary commercial venture in catering and hotel-keeping. In the present case the decision of the Commissioners was that, while certain features of the Institute conformed to the idea of charity, they were not so dominating, nor was the general character of the Institute such, as effectively to distinguish it from an ordinary social club. In my opinion this conclusion is amply supported by the facts and is well founded in law.

Questions put:

That the Order appealed from be reversed.

The Not Contents have it.

That the Order appealed from be affirmed and that the appeal be dismissed with costs.

The Contents have it.

[Solicitors:—T. D. Jones & Co.; Solicitor of Inland Revenue.]