



**THE MODERN LAW OF CHARITIES.** By G.W. Keeton and L.A. Sheridan. 1971. Northern Ireland Legal Quarterly Inc., Belfast. Pp. Lviii + 404. £ 5.95.

THE FIRST edition of this book appeared in 1962. Since then many changes of far-reaching consequence have taken place. The latest edition under review presents a comprehensive and up to date statement of the law of charities in England, along with a detailed treatment of the case law of Scotland, Ireland, Canada, Australia and New Zealand. The authors have also assessed the effect of the Charities Act, 1960, which has introduced improvements into the administration of charities and has increased the importance of the function of the charities commissioners. The references to the Nathan Report,<sup>1</sup> 1952, provide the background for various provisions of the said Act.

The book is divided into twenty-one chapters with six appendices. Chapter I gives a detailed discussion concerning the origin and development of the law of charities, dating back to the Statute of Charitable Uses, 1601, which has been the "starting point of the modern law of charities." The objects of the Act of 1601 were to determine what a charitable purpose could be and to remove the abuses of administration. Ever since then, from time to time, various committees have been set up to consider, and statutes enacted to achieve, the objects of the Act of 1601. Finally, the Nathan Committee was set up, which gave its report in 1952, leading to the enactment of the Charities Act, 1960.

Two main changes recommended by the committee were:

- (1) [S]ome system of administrative control by an independent authority, without, however, ousting the jurisdiction of the courts; and (2) legal changes which would provide for the possibility of broadening charitable trusts which were too narrow in their operation, and possibly also transferring charitable funds to other, more socially appropriate, objects.

The committee also recommended an extension of the *cy-pres* doctrine.

In England, the Charities Act, 1960, and in Ireland, the Charities Act, 1961 (Republic of Ireland) and the Charities Act, 1964 (Northern Ireland) have in substance adopted the recommendations of the Nathan Committee, regarding the administrative control of the trusts.

Chapter II deals with the legal meaning of charity. It is important to resolve whether or not a purpose is charitable "because (among other reasons) gifts for non-charitable purposes are often void by virtue of being non-charitable or for uncertainty or perpetuity; because charitable trusts

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1. Report of the Committee on the Law and Practice Relating to Charitable Trusts (1952).



are administered and enforced differently from private trusts; because the cy-pres doctrine applies only to charitable trusts; because income applicable to charitable purposes is exempt from income tax and corporation tax, and charities are not liable to selective employment tax; and because premises occupied for charitable purposes are not rated or are granted limited relief from rates."

The starting point of the definition of charity and the enumeration of charitable purposes is the Statute of Charitable Uses, 1601. It was followed by the morass of case law expanding from year to year. But the judges "long ago abandoned the task of attempting to define what a charitable purpose is" and did not enunciate any "governing principle."

*Commissioners for Special Purposes of the Income Tax v. Pemsell*,<sup>2</sup> is considered to be the case of highest authority, in giving a common meaning of "charity" for all purposes, "no matter whether the question to be decided was the validity of a gift to charity or that of exemption of charity from income tax." As stated by Lord Macnaghten :

"Charity" in its legal sense comprises four principal divisions : trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads.<sup>3</sup>

This definition referred to by the courts, the authors point out, is only a classification of charitable purposes. Moreover, it is "defective because of the excessive technicality, fine distinctions and consequent uncertainty evolved by the courts." This brought suggestions from various quarters that an adequate definition of charity should be introduced by a statute.

But when the Charities Bill came up for consideration in the Parliament, the plea for the inclusion of the definition in the Act was decisively rejected. The authors point out that the Parliament probably would not do so "because of the difficulty of framing it and because of the danger that legislation will be restrictively interpreted by the courts." The Nathan Committee also thought that if the content of charity were to remain flexible, it was essential that the law should continue to be judge-made.

Consequently, the Charities Act, 1960 has left the question of the definition exactly where it was earlier and the courts are left without legislative guidance in discharging their responsibility of deciding what is and what is not a charity.

In chapters III to XIII, there is a detailed examination of various charitable purposes and their treatment by the courts. The judges have continually commented on the lack of logic and consistency in the case law. Most of the charities so far recognized by the courts can be

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2. (1891) A.C. 531.

3. *Id.* at 583.



classified under the following heads: the advancement of religion; the advancement of education; protection and benefit of animals; relief from poverty; relief for the old, the bereft and the disabled; promotion of health and temperance; provisions for the benefit of a locality; provisions for public works and amenities; promotion of the armed forces and the defence; and the promotion of economic activity.

In chapters XIV and XV, there is a detailed treatment of the doctrine of *cy-pres* and its extension. Several distinct types of *cy-pres* application as established by judicial decisions are well summed up as follows:

- A. Where a general charitable intent must be shown.
  1. Where the purpose indicated by the testator is impossible or illegal.
  2. Where the purpose has never existed.
  3. Where the object has existed, but ceases to exist before the testator's death.
- B. Where the question of general charitable intent is immaterial.
  4. Where the purpose or institution ceases to exist after the gift has taken effect.
  5. Where a charity comes to an end because the object for which it was established has ceased to exist, or has come to an end for some other reason.
  6. Where the machinery for the application of the gifts fails.
  7. Where, after providing for the particular object, there is a surplus of charitable funds.

The Nathan Committee investigated into the question of the extent to which the *cy-pres* doctrine should be relaxed or extended. They thought that :

[C]*y-pres* doctrine should be relaxed so as to permit trust instruments to be altered by schemes in circumstances falling short of the original objects of the trust becoming impracticable.

The general relaxation of the *cy-pres* doctrine is contained in section 13 of the Charities Act, 1961, which specifies the circumstances in which there may now be *cy-pres* application of charitable funds. Section 14 of the said Act deals with the special problem of the disposal of undistributed funds raised by public subscription.

Chapter XVI gives a detailed examination of imperfect trust provisions, such as trusts when some non-charitable purpose was included or when it was not clear that only charitable purposes were within the scope. In England, the Charitable Trusts (Validation) Act, 1954 applies to an 'imperfect trust provision' and such a provision is defined in section 1 of the Act as :

[A]ny provision declaring the objects for which property is to be held or applied, and so describing those objects that, consistently with the terms of the provision, the property could be



used exclusively for charitable purposes, but could nevertheless be used for purposes which are not charitable.

A good example of the application of this Act is provided by *Re Wykes*.<sup>4</sup> The testator left his residuary property "as a benevolent or welfare fund or for welfare purposes for the sole benefit of the past, present and future employees of" E. Wykes (Leicester) Ltd. It was held that this was invalid. Buckley, J., observed that it was saved by the Act of 1954.

Chapter XVII deals with the rule against perpetuities. In England, under the Perpetuities and Accumulation Act, 1964, "it is no longer a question of a gift to charity being void ab initio if the trust might take effect outside the perpetuity period. The gift becomes void if in fact the perpetuity period runs out without the trust coming into operation."

Chapter XVIII examines the powers and functions of the charity commissioners in England. Under section 1 of the Act of 1960, the charity commissioners are charged with the duty

Of promoting the effective use of charitable resources by encouraging the development of better methods of administration, by giving charity trustees information or advice on any matter affecting the charity and by investigating and checking abuses.

The commissioners themselves have no power to act in the administration of the charity. They must now present their annual report to the Home Secretary to be laid down before the Parliament. Section 4 of the Act of 1960 charges the charity commissioner with the duty of preparing and keeping up to date a register of charities. Section 18 of the Act defines the jurisdiction of the charity commissioners. Section 19 confers an important additional power upon the commissioners to establish schemes which involve the alteration of the provision made by the Act of Parliament establishing or regulating charity, or which may go beyond the powers exercisable by the commissioners.

Chapter XIX enumerates the duties of charitable trustees. The primary duty of a charitable trustee is to carry out the trust according to the instructions of the founder, so long as these are capable of fulfilment. There are judicial decisions to the effect that, provided the true intention is being followed, it is permissible for the trustees to contravene the strict letter of the instrument. Under section 13(5) of the Charities Act, 1960, it is their duty to secure the effective use of charity of the trust property, by taking steps to enable it to be applied *cy-pres*, where its present use is ineffective.

Chapter XX describes the position of charities from the standpoint of taxation and estate duty. The House of Lords in *Pemsel's* case has

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4. (1961) Ch. 229.



established that if an institution is a charity for purposes of general activity and administration, it is also necessarily a charity for income tax purposes. The cases have also made it clear that "income *applied* to charitable purposes is not tax free unless that income is also *applicable* to charitable purposes only." Gifts to charity by will do not diminish the incidence of estate duty on the property passing on the testator's death.

The last chapter XXI deals with the rating of charities and similar organizations. In England, the legislation now in force is the General Rate Act, 1967.

This, in brief, is the scheme of chapters and the treatment of charities and their various facets. The authors would have done better if they had divided the book in three parts : *Part I—Charities : General Principles* (comprising chapters I, II, XIV, XV, XVI, XVII, XX and XXI); *Part II—Charitable Purposes* (comprising chapters III to XIII); *Part III—Administration of Charities* (comprising chapters XVIII and XIX). This would give a coherent and a composite picture of charities and the problems relating to them. Nevertheless, the authors deserve the thanks of all readers for this detailed work which reveals to us the thinking of the legislators, the judges and all those who have been concerned with the complex problems of charities and the related socio-economic phenomena.

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