

No. 828.—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION).—
2ND AND 3RD MARCH, 1931.

COURT OF APPEAL.—1ST, 4TH AND 21ST MAY, 1931.

HOUSE OF LORDS.—9TH AND 10TH MAY, 1932.

KEREN KAYEMETH LE JISROEL, LIMITED v. THE COMMISSIONERS OF
INLAND REVENUE.⁽¹⁾

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

The Appellant Company was registered in England as a company limited by guarantee and had, as its primary object, the acquisition of land in the Holy Land for the purpose of settling Jews thereon. No part of the Company's income or property was transferable by way of profit to the members of the Company.

The Company had in fact acquired land in Palestine which had been let to destitute Jews either rent-free, or, in a few cases, at rents not exceeding two per cent. of the capital value of the land. In connection with the land acquired the Company had carried on operations of building, supplying water, afforestation and cultivation. It had also assisted the work of various religious, charitable and educational institutions.

The Company claimed exemption from Income Tax under Section 37 (1) (b) of the Income Tax Act, 1918, in respect of interest on consolidated stock owned by it.

Held, that the Company was not entitled to the exemption claimed.

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 the 10th day of July, 1929, Keren Kayemeth Le Jisroel, Limited, (hereinafter called the Association) appealed against the refusal of the Commissioners of Inland

⁽¹⁾ Reported (K.B.) 47 T.L.R. 298, (C.A.) [1931] 2 K.B. 465 and (H.L.) 48 T.L.R. 459.

Revenue to grant exemption from Income Tax under Section 37 of the Income Tax Act, 1918, on the interest on £32,000 consolidated stock owned by the Association and representing donations, the Commissioners being of opinion that the Association was not a charity within the meaning of that Section.

2. The Association is a company limited by guarantee forming part of the Zionist organisation, the objects of which are the restoration of Jews to and their resettlement upon the Holy Land. The primary object and function of the Association is the acquisition in perpetuity of land in the Holy Land as the inalienable property of the Jewish people for the purpose of settling Jews on such land.

No part of the income or property of the Association is payable or transferable directly or indirectly by way of dividend, bonus or otherwise howsoever, by way of profit to the members of the Association, nor, in the event of the winding-up of the Association, are the surplus assets distributable among them.

A copy of the Association's memorandum and articles of association, marked "A", is attached to and forms part of this Case⁽¹⁾.

3. In addition to the acquisition and letting of land to Jews, the Association has, under its ancillary powers, installed a water supply upon much of such land, planted forests, cultivated plantations and, in a few cases in urban districts, has erected homesteads for workers and has, in carrying out such operations and otherwise, trained and found employment for agricultural and other workers. The Association has also granted land for, and advanced money in connection with, the erection of synagogues, orphanages, hospitals, social clubs for homeless workers, technical, art and other schools, instructional farms, the Hebrew University, a Jewish national museum and other religious, charitable and educational institutions.

The settlers to whom land has been let by the Association and for whose benefit the funds of the Association have otherwise been employed, have been destitute Jewish refugees from eastern Europe and elsewhere, consisting largely of fugitives from religious persecution and the homeless dependents of victims of massacres, and other impecunious Jewish settlers who could not without such assistance have followed their agricultural or other occupations in the Holy Land. The funds of the Association have been collected by subscriptions, donations and bequests upon the understanding that they would be so employed, and in many cases donations and bequests to the Association have been allocated by the donors themselves to a specific object.

(1) Not included in the present print.

The Association has been recognised by the Government of Palestine as a public benefit undertaking.

A statement, a copy of which marked " B " is attached to and forms part of this Case⁽¹⁾, was put in showing the assets and liabilities of the Association, the various classes and countries of origin of the Jewish settlers in Palestine assisted by the Association, and the general activities of the Association.

A copy of an affidavit sworn on the 25th July, 1923, by Solomon Kaplansky detailing the objects and policy of the Association, marked " C ", is attached to and forms part of this Case⁽¹⁾.

In the great majority of cases, there were no contracts between the Association and the settlers, but, under the law of Palestine, a tenant acquires rights of occupancy which may be described as tenant rights after occupation for a certain number of years.

4. The Association does not receive any rent for the lands acquired by it, except in the case of a small number of settlers who originally came to Palestine without means and, having gained experience on the Association's farms and otherwise, have been enabled to earn a livelihood. In the year 1927, the total rentals so received by the Association amounted to £1,433 or about 0·1 per cent. of the capital value of the land acquired by the Association. In no instance did the rent charged exceed two per cent. of the capital value of the land.

A statement, a copy of which marked " D " is attached to and forms part of this Case⁽¹⁾, was put in showing the rentals received by the Association and the capital value of the property of the Association for the years 1920 to 1927, both inclusive.

5. The annual general meeting of the Association is held in various countries. It was last held in England in 1920.

The Association's head office is in Jerusalem and its funds are banked partly in England and partly in Palestine. The Association's common seal and its books are kept in Palestine. The registered office of the Association is in England and the Association has an administrative officer and a secretary permanently in England and employs a solicitor in England whenever necessary.

6. Dr. Asher Feldman, B.A., Ph.D., ecclesiastical assessor to the Chief Rabbi, stated in evidence that in his view the objects of the Association were religious, and that it was part of the religious duty of every Jew to assist the repatriation of the Jews in the Holy Land. His view was based upon Leviticus, Chapter 25, verses 23 and 24, and upon a continuous line of authorities extending from Biblical times to the present day, including the oral or Rabbinic law, such as the Talmud and other books of authority,

(¹) Not included in the present print.

and he stated that it represented the universal religious sentiment of Jews throughout the ages and at the present day, forming part of their daily prayers.

7. On behalf of the Association it was contended that :

- (1) It being a part of the Jewish religion to acquire and hold land in Palestine for the Jewish people, assisting in such work was a religious act and the furtherance of that object was correctly described as the advancement of religion.
- (2) The funds of the Association having been subscribed or given upon the understanding that they would be devoted for the benefit of impecunious Jewish settlers, the Jewish settlers for whose benefit those funds were employed being, in fact, all poor people, the objects and activities of the Association were for the relief of poverty.
- (3) The purposes of the Association were purposes beneficial to the community.
- (4) That for some or all of the above reasons, and in view of the facts hereinbefore stated, the Association was a body established for charitable purposes only and that the said interest formed part of its income, and was applied to charitable purposes only.
- (5) Alternatively, that for such reasons, and in view of such facts, the said interest, according to the rules established by the said memorandum of association, was applicable to charitable purposes only, and was in fact so applied.

8. On behalf of the Respondents it was contended :

- (1) That the main object of the Association was the repatriation of the Jews in the Holy Land without regard to the means of the immigrants.
- (2) That the objects of the Association did not necessarily include the alleviation of poverty among the Jews or the relief of the destitute.
- (3) That the promotion of the objects of the Association was not a religious duty of members of the Jewish faith nor for the advancement of religion.
- (4) That the object of the Association was not a purpose beneficial to the community in the charitable sense.
- (5) That it had not been proved that the Association was established either for the advancement of religion, the relief of poverty, or a purpose beneficial to the community.

- (6) That the Association was not a body to which Section 37 (1) (c) of the Income Tax Act, 1918, applied, as it was controlled and resident abroad, and its activities were carried on abroad.
- (7) That it had been proved that the dividends from the said consols did not form part of the income of any body of persons or trust established for charitable purposes only and had not been applied to charitable purposes only.

9. We held that the Association was not a charity and that its funds were not applicable to nor applied to charitable purposes only. We therefore refused the claim.

10. The Association, immediately upon the determination of the appeal, declared to us its 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.

MARK STURGIS, } Commissioners for the Special
R. COKE, } Purposes of the Income Tax Acts.

York House,
23, Kingsway,
London, W.C.2.
25th March, 1930.

The case came before Rowlatt, *J.*, in the King's Bench Division on the 2nd and 3rd March, 1931, and on the latter date judgment was given in favour of the Crown, with costs.

Mr. A. M. Latter, K.C., and Mr. H. Infield appeared as Counsel for the Company and the Attorney-General (Sir W. A. Jowitt, K.C.) and Mr. R. P. Hills for the Crown.

JUDGMENT.

Rowlatt, J.—I do not think I need trouble you further, Mr. Hills.

In my judgment this appeal fails. It is an interesting question and arises in respect of a company limited by guarantee called by Hebrew words which I am told mean the Perpetual Fund of or for Israel. It is said that the objects of this organisation are purposes of charity and that the funds are devoted thereto within the

(Rowlatt, J.)

meaning which is given to the word "charity" for this purpose. The object of this institution can, I think, be most shortly described as Zionist, which is a word we all know. The object, intention, purpose and desire is to populate Palestine, and the surrounding country to a very large extent as far as that goes, (but I think that is only to give a certain latitude) but essentially to populate Palestine with Jews. It seems to me that the obligation which is felt and which is put as a religious obligation—I will deal with that particular phase of it in a moment—and the purpose which it is desired to fulfil is towards the land of Palestine as the home of the Jewish race and held in veneration by them. The object is not, as it seems to me, to find a dwelling place for Jews who are dissatisfied with their present dwelling place, which dwelling place may be Palestine; the object is that Palestine should be populated by Jews, and the dominant motive is towards the land and not towards the people, although of course, both elements are necessary in order to fulfil the object. If the Jews who are dispersed in various countries all over the world, Europe in particular, were well treated and free from persecution and not subject to any special degree of poverty, there would be no need for them to quit the lands where they were, but I apprehend the desirability from many points of view of populating Palestine with Jews would still be unabated. The text in Leviticus which has been brought before me, and the interpretation upon which the argument is founded (which it is not for me to criticise) would not become obsolete, because Jews all over the world were happy where they were; the obligation is towards the land, and I can well appreciate it. In those circumstances, very wide powers are taken as to what this Company may do—the widest possible powers; but they are dominated, of course, by the purpose of settling Jews on lands to be obtained in Palestine.

Two things are to be observed in passing to get them out of the way. First of all, it is quite clear that the rules of this organisation have quite eliminated the idea of private profit; in no event whatever, either during the currency of the organisation or upon its winding-up, can any of the funds be devoted for the purpose of private gain to those concerned in it. That question, therefore, is out of the way. It must be observed further, of course, that the object of the organisation is not a political object in the sense that it desires to create a Jewish state, a government by the Jewish nation, if there is such a thing, or anything of that kind, but it is only to promote from the point of view of municipal law the occupancy of lands by Jews under such ownership as is permitted by the laws of the land of the organisation itself. That is the scheme of the thing.

Now it is said that this is to be regarded as a charity, either because it is for the promotion of religion or for the relief of poverty, or because it comes within the undefined class alluded to,

(Rowlatt, J.)

but not defined, of course—it is not worth while going over that controversy again—in the fourth phrase of Lord Macnaghten's judgment in *Special Commissioners of Income Tax v. Pemsel*⁽¹⁾.

Now as regards the question of the promotion of religion, there are plenty of materials in the case which have been put before me very cogently, and in the forefront of the case, that the restoration of the land of Palestine to Jewish occupation is a religious object among the Jews and, as I say, the text in Leviticus is cited as being at the basis of it. I do not think that argument can prevail. It seems to me that the promotion of religion means the promotion of the spiritual teaching of the religious body concerned and the maintenance of the spirit of the doctrines and observances upon which it rests or in which it finds expression, if one likes to put it in that way, or at any rate with which it is bound up. But if a religion enjoins the pursuit of some ulterior aim in itself secular so that other people not of that religion might, for either reasons of private sentiment or views of public policy, or what not, support the same aim, then it seems to me that the pursuit of that aim, the promotion or achievement of that aim, is not the promotion of religion for this purpose. To take this case one can understand that the promotion of an object of a *quasi* political or perhaps I had better say racial character, may be enjoined by a religion. Other people, perhaps, to take this case, persons of Jewish birth, who no longer adhere to the Jewish faith, might, for sentimental, sympathetic or other reasons not connected with religion, support the same aim. Could it be said that in the case of strict professing Jews it was a religious act and that in the case of others it was not? Of course, one can understand from one point of view it might be said that one man was doing it from religious motives and another man was doing it from temporal motives, and that would be quite true; but, for the purpose of the present question, to say that a fund devoted to it by one man for religious reasons was a charity, and that a fund devoted to it for a temporal reason was not a charity—I am speaking of the religious point in the case; I am not speaking of other categories, of course—that one would treat it as a charity and one would not, seems to me to be almost a *reductio ad absurdum*. Therefore, I cannot think this can be called a charity because it is for the promotion of religion.

Now as regards the relief of poverty, that seems to me to present more difficulty, but I think it is to be solved along the same lines. The governing words are that the lands are to be acquired for the purpose of settling Jews on those lands. It is very truly said by Mr. Latter that you need not find the relief of poverty proclaimed if it is clear from the words that that is the idea and the intention; but Mr. Latter fastens upon the word

(1) 3 T.C. 53.

(Rowlatt, J.)

"settle", and he says that you do not "settle" people who have the means to go there themselves; and it is true that in the case dealing with repatriation of Australian soldiers after the war it was held to involve the idea of repatriating soldiers who could not help themselves. So in the case of widows and that class of case; a widow is someone who has lost the person whose duty it was to maintain and support her; and widowhood, although, of course, not always *prima facie* the case, does involve the idea of straitened circumstances, or circumstances less adequate than they were during marriage, and so on. When one fastens on a word like "settling" in this memorandum of association for the purpose of an argument of that kind one must look at it in all the surrounding circumstances, and it seems to me that the dominant purpose here, as I said before—it is the same point of view over again—is not the amelioration of the condition of the individuals, but is the repopulation of the Sacred Land; that it seems to me, is the intention. It was not called into being by the contemplation of the poverty and suffering of Jews; it was called into being by the emptiness of their sacred country of Jews, and, therefore, I think it is not for the relief of poverty, although, of course, incidentally it undoubtedly does help a great many people who are in great financial and economic straits. That is the way in which I look at those two heads.

I come now to the third head. I do not deal with the point—I do not think it is necessary and I am not very much impressed with it—about Jews not being a class which we can regard for this purpose, or the expression "trust" being too vague, or anything of that kind. That is not the way in which the answer to this claim appears to me to arise. It all comes back, in my mind, to the same fundamental idea. This is an organisation to populate the Holy Land with a particular class of inhabitant.

Now I should just like to refer to some observations of Lord Haldane in the case of the *Attorney-General v. National Provincial Bank*—that was Tetley's case⁽¹⁾. Lord Haldane is there dealing with the word "patriotic" and the immediate bearing of that case is not what I cite it for, because there they were dealing with the vagueness and comprehensiveness of the word "patriotic". What I should like to read is a passage from Lord Haldane's speech on page 267 in the report of the case in [1924] A.C. "What 'charitable' is I should be sorry to have to define with precision 'without hearing an elaborate argument, but what does not come under 'charitable' I think is usually fairly plain. Between a 'patriotic intention and a charitable intention there is a distinction not only in language but in substance. In the case of a gift for charitable purposes there is a desire to profit people who would

(1) [1924] A.C. 262.

(Rowlatt, J.)

“ not be profited without your gift—that is the dominant motive. “ In the case of patriotism there is a desire to fulfil one dominant “ purpose, that is to benefit the cause of the country ”—that is the case before him—“ to which you belong.” Incidentally I refer to his stress of the word “ intention ” as showing how one is permitted to look at these questions.

Here, it seems to me, the intention is to benefit the cause of the population of a particular country by a particular race. I wish to say no more than that that seems to me to disclose no analogy to any of the objects mentioned in the statute of Elizabeth. It seems to me to strike a note which I for myself cannot detect in the statute at all.

I think, therefore, this appeal must fail, with costs.

The Company having appealed against the decision in the King's Bench Division, the case came before the Court of Appeal (Lord Hanworth, *M.R.*, and Lawrence and Slessor, *L.JJ.*) on the 1st and 4th May, 1931, when judgment was reserved. On the 21st May, 1931, judgment was given unanimously in favour of the Crown, with costs, confirming the decision of the Court below.

Sir John Simon, K.C., Mr. A. M. Latter, K.C., Mr. H. Infield and Dr. S. Daiches appeared as Counsel for the Company and the Attorney-General (Sir W. A. Jowitt, K.C.) and Mr. R. P. Hills for the Crown.

JUDGMENT.

Lord Hanworth, M.R.—This appeal is from a decision of Mr. Justice Rowlatt who on the 3rd March, 1931, confirmed the decision of the Commissioners for the Special Purposes of the Income Tax Acts refusing relief to the Appellants under Section 37 of the Income Tax Act, 1918, on the ground that the Appellant Association was not a charity, and that its funds were not applicable to, nor applied to charitable purposes only.

The Association is a company limited by guarantee forming part of what is known as the Zionist organisation, the objects of which are the restoration of Jews to, and their resettlement upon, the Holy Land.

The Case states that the primary object and function of the Appellants is the acquisition in perpetuity of land in the Holy Land as the inalienable property of the Jewish people for the purpose of settling Jews on such land.

(Lord Hanworth, M.R.)

It should be made clear at the outset that "no part of the income or property of the Association is payable or transferable directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to the members of the Association, nor, in the event of the winding-up of the Association, are the surplus assets distributable among them."

It is unnecessary to repeat the salient facts, which are succinctly set out in the Case.

The immunity from Income Tax which is permitted in certain cases, and upon certain conditions being fulfilled, under Section 37 of the Income Tax Act of 1918, is claimed upon the ground that the Appellants fall within the four principal divisions into which charity in its legal sense is stated by Lord Macnaghten in his well-known judgment in *Pemsel's* case⁽¹⁾, to be divided.

I state the heads shortly. Trusts for the relief of poverty: for the advancement of education: or religion: and trusts, for purposes beneficial to the community not falling under the previous heads.

The right to exemption under Section 37 must be established by those who seek it. The onus therefore lies upon the Appellants.

They claim relief from Income Tax which would in ordinary course and unless the Appellants bring themselves within the exception, be chargeable upon the interest of £32,000 consolidated stock owned by the Appellants and representing donations given to them.

The terms of the Section are specific. The relevant Sub-section (1) (b) runs "from tax under Schedule C in respect of any interest, annuities, dividends or shares of annuities, and from tax under Schedule D, in respect of any yearly interest . . . forming part of the income of any body of persons or trust established for charitable purposes only, or which, according to the rules or regulations . . . are applicable to charitable purposes only, and so far as the same are applied to charitable purposes only."

It will be noticed that the words "charitable purposes only" are thrice repeated. The objects for which the Association is established set out in their memorandum are wide, very wide, "to purchase . . . acquire lands, etc., in Palestine, Syria or other parts of Turkey in Asia and the Peninsula of Sinai for the purpose of settling Jews on such lands." Then follow twenty-one specified objects and powers ending with a proviso that all these are to be "exercised only in such a way as shall in the opinion of the Association be conducive to the attainment of the said primary object."

(1) *Pemsel v. The Special Commissioners of Income Tax*, 3 T.C. 53.

(Lord Hanworth, M.R.)

Reliance is placed upon this proviso as cutting down the objects and powers of the Association so as to compress them, and force them all to converge to the acquisition of the lands and the purpose of settling Jews upon them. But the proviso is loose, for it leaves the test of what is conducive to the primary object of the Association to the opinion of the Association itself. No outside test is imposed. Hence it is not unfair to say that the Association is to be the interpreter of its objects and powers.

It can build, control and superintend railways, factories, work shops, markets; purchase, develop, deal with and turn to account mines, minerals and precious stones; purchase and acquire any personal property; purchase and carry on businesses suitable for the purposes of the Association; acquire concessions in the prescribed region; and practically do all things necessary to these undertakings and enterprises, or incidental or conducive to these objects—conducive, that is, in their own unfettered opinion and judgment.

The relevancy of considering the width of these terms becomes apparent at once when one turns to the words of Sir George Jessel, Master of the Rolls, in the case of *St. Bride's, Fleet Street*, 35 Ch. D. 147. There he said that in deciding whether the test of charity is fulfilled or not "What the Court has to look at, is the "purposes for which the property is held, and the way in which it "ought to be applied."

It is unnecessary to trace the source, or determine the motives. The facts as to how it is being used may be laid aside. But the purpose for which the property is held, or ought to be applied, is crucial.

Turning now to the problem whether either of the four characteristics can be found in the Association, it is sufficient to say that as to "Religion" I agree with the observations of Mr. Justice Rowlatt on that head. The promotion of religion means the promotion of spiritual teaching in a wide sense, and the maintenance of the doctrines on which it rests and the observances that serve to promote and manifest it—not merely a foundation or cause to which it can be related. Religion as such finds no place in the memorandum of the Association.

Then as to "Education" there are some items in the details exhibited to the Case, of expenditure on schools and schooling. But in my judgment, the Association fails to establish that it fulfils the requirements of these heads. It was not established for religious or educational purposes only.

Similarly, relief of poverty does not fit the purpose of the Association. It is true that a scheme which deals with settling Jews on land in a new country away from present unhappy surroundings, may be interpreted as mitigating poverty and being chiefly of service to persons in need and distress; but I agree with

(Lord Hanworth, M.R.)

Mr. Justice Rowlatt that it is not the improvement of poor Jews and their families that is the characteristic purpose of the Association. It is rather the re-population of the Holy Land and other lands in a wide area round it, so that once more the population of that district may be Jewish. That is the aim, "the primary object," of the Association.

I turn, therefore, to the fourth division of Lord Macnaghten⁽¹⁾; "trusts for other purposes beneficial to the community not falling under any of the preceding heads." These words have been held to be illustrative and not exhaustive. It is useful to bear in mind when considering this class that "charity" is to be interpreted according to the law of the country where the Commissioners sit, see *Pemsel's case*, [1891] A.C. 587⁽²⁾.

Again, the fact that the activities of the charity are to be exercised abroad does not detract that characteristic from it, if it satisfies the tests otherwise—see per Lord Halsbury, *Pemsel's case*, 3 T.C., at page 62; and the decision in the case itself; and compare *Verge v. Somerville* [1924] A.C. 496, where a scheme for the repatriation of New South Wales soldiers was held good.

But there are certain important and broad considerations that must be kept in the foreground. It is not every philanthropic scheme that is charitable. "I am certain that 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." These are the words of Lord Justice Lindley in *re MacDuff* [1896] 2 Ch., page 466. Lord Macnaghten's words as to the fourth class, said Lord Justice Rigby, mean that this head is the one under which valid charities for the general benefit of the community may be ranged, but they do not mean the converse, that every purpose that can be ranged under this head is charitable.

In that case *re MacDuff*, where a bequest had been made "for charitable or philanthropic purposes," it was held that as there may be philanthropic purposes which are not charitable, the bequest failed.

It is necessary, therefore, to note that a distinction is required to take a benevolent purpose out of the category that is philanthropic and to put it into that which is charitable.

Next, one of the principles that guide the Court to its decision is laid down by Lord Eldon in *Morice v. The Bishop of Durham*, 10 Vesey 522. "As it is a maxim, that the execution of a Trust shall be under the control of the Court, it must be of such a nature, that it can be under that control." This maxim is adhered to in the case just quoted by Lord Justice Lindley at page 463. There follows a valuable discussion as to what is charitable and what is philanthropic only. I confess that when I recall

(¹) 3 T.C. at p. 96.

(²) *Ibid.* at p. 99.

(Lord Hanworth, M.R.)

the wide objects and powers of the Association, that the Jews selected for being settled on the lands secured by the Association, not merely in the Holy Land but anywhere in Turkey in Asia can be drawn—as indeed they are drawn—from all parts of the world—the inference seems to follow that no charitable purpose, as distinguished from a wide philanthropic purpose towards Jews, can be demonstrated. The land and its re-population is the aim, and the keynote is derived from the passage in the Book of Leviticus to which our attention was drawn.

Indeed I find it difficult to bring the ambit and purpose of the Association within any of the limits prescribed for a charitable purpose. If the purpose is emigration, that has been held to be indefinite and not necessarily a charitable purpose. See *re Sidney*, [1908] 1 Ch. 126. On the other hand the repatriation of soldiers has been held good (*Verge v. Somerville*, [1924] A.C. 496).

That the purpose is to deal with, and it may be to benefit Jews is clear: and there is no difficulty or danger to its charitable nature in the term Jews. Like many other terms, it may not be easy to define, but there would not be any difficulty in deciding in actual cases between those within and those without the range of that term for the purpose of the Association.

There is, however, a danger to my mind in too close a consideration of the decided cases. No one case is a clear guide to another depending upon different facts and considerations. As Lord Justice Rigby said in *re MacDuff* at page 469, “the cases with regard to charities are innumerable; but in the case of charities, as in all other cases, precedents are only useful in so far as they enable us to deduce a principle.” Then he states the principle referred to above that the trust must be sufficiently certain to enable the Court to superintend and give effect to the trust according to its terms, and he points out that if there is an alternative, the general rule comes in that this is a matter too indefinite for the Court to give effect to it.

In the judgment of Lord Justice Lopes in that same case he cites the words of Sir W. Grant, Master of the Rolls, in *James v. Allen*, 3 Merivale, page 19. “The whole property might . . . have been applied to purposes strictly charitable. But the question is, what authority would this Court have to say that the property must not be applied to purposes however benevolent, unless they also come within the technical denomination of charitable purposes? . . . the trust is too indefinite for the Court to execute.”

These considerations apply here.

Every sort of activity, benevolent and philanthropic as well as charitable, can be exercised by the Association. If the Court attempted to intervene in matters which appeared wide of and outside a charitable purpose, the answer could be made by the

(Lord Hanworth, M.R.)

Association that in their opinion it was conducive to its primary object—the purpose of settling Jews on the lands of Turkey in Asia. That would meet any objection raised as to the powers of the Association, but would it answer Sir W. Grant's point? A careful survey of the principles to be applied, and the illustrations found in the cases to which we have been referred, leads me to the conclusion that the decision of the Commissioners was right in law, and that the judgment of Mr. Justice Rowlatt confirming that decision must be upheld. The yearly interest received by the Association on this fund cannot be held to form part of the income of a body of persons or trust established for charitable purposes only.

Lawrence, L.J.—In this case the Special Commissioners have held that the Appellant Company is not a body established for charitable purposes only and that its funds were not applicable nor applied to charitable purposes only, and consequently that the Commissioners of Inland Revenue were right in refusing to grant exemption from Income Tax under Section 37 of the Income Tax Act, 1918, in respect of the interest on a sum of £32,000 consolidated stock owned by the Company. The decision of the Special Commissioners has been affirmed by Mr. Justice Rowlatt, and the Company now appeal to this Court.

The present case involves the somewhat elusive and difficult enquiry, not infrequently met with in these cases, whether or not a particular purpose described in an instrument in general terms is a charitable purpose in the legal sense. The instrument with which this case is concerned consists of the memorandum of association of the Company and it is essential to bear in mind that in order to obtain exemption from Income Tax under the Section it is not enough that the purposes described in the memorandum should include charitable purposes, the memorandum must be confined to those purposes so that any application by the Company of its funds to non-charitable purposes would be *ultra vires*.

Turning now to the memorandum it will be seen that the object described in sub-clause (1) of clause 3 is to acquire lands, forests, rights of possession and other rights, easements and other immovable property in Palestine, Syria, and other parts of Turkey in Asia and the Peninsular of Sinai, or any part thereof, for the purpose of settling Jews on such lands. The memorandum provides that this object is the primary object of the Company and that the powers conferred by the succeeding sub-clauses shall be exercised only in such a way as shall in the opinion of the Company be conducive to the attainment of the primary object. The succeeding sub-clauses (of which there are no less than twenty-one) confer very wide powers on the Company. I will not attempt to give a complete summary of these powers, it is sufficient to state that they include

(Lawrence, L.J.)

powers to cultivate and improve any lands of the Company and to erect thereon any buildings required for any purposes of the Company (sub-clause 2), to let any of the land of the Company to any Jews upon any terms (sub-clause 3), to acquire, construct and manage tramways, railways, harbours, docks, hydraulic works, telegraphs, telephones, factories and workshops (sub-clause 4), to purchase, sell, work and develop mines and mining rights and to carry on the business of mining and metallurgy (sub-clause 6), to purchase and sell personal property of all kinds (sub-clause 7), to acquire and undertake all or any part of the business property and liabilities of any person or company carrying on any business which the Company is authorised to carry on (sub-clause 9), to make, accept, endorse and execute promissory notes, bills of exchange and other negotiable instruments (sub-clause 13), to promote any companies for any purpose which may seem likely directly or indirectly to benefit the Company and to deal with the shares in any such company (sub-clause 14), to enter into any arrangement for sharing profits with any person or company carrying on or about to carry on any business which the Company is authorised to carry on (sub-clause 15), to deal with any moneys of the Company not immediately required for any purposes of the Company in such manner as the Company may deem fit (sub-clause 17), and to make advances to any Jews in the prescribed region upon any security which may be thought fit (sub-clause 18).

The extensive powers conferred on the Company by sub-clauses (2) to (22) (to some of which I have referred in order to indicate their character) although purporting to be secondary to the object mentioned in sub-clause (1) are nevertheless objects for which the Company is established.

The Company can exercise any or all of these powers whenever in its opinion such an exercise would be conducive to the attainment of the so-called primary object which, from a practical point of view, means that it can exercise them whenever it is minded to do so, and whether such exercise is in fact conducive to the attainment of that object or not, as neither the Court nor any one else can control the Company's opinion, or otherwise interfere with the manner in which it chooses to carry out its objects.

It would be difficult in any case to determine whether any particular enterprise undertaken by the Company under its wide powers was or was not in fact conducive to the attainment of the primary object, but when the question of whether it is or is not so conducive is left to the decision of the Company itself, I cannot avoid the conclusion that the objects mentioned in sub-clauses (2) to (22) can be carried out by the Company just as freely as the object mentioned in sub-clause (1) and that there is no substantial difference in degree between them.

(Lawrence, L.J.)

Moreover the nature of the objects enumerated in sub-clauses (2) to (22) throw a strong light on the true scope and meaning of the object mentioned in sub-clause (1). We have been pressed to hold that this object is strictly confined to acquiring land in the prescribed area for the sole purpose of settling poor Jews upon it. One has merely to glance at the character of the objects mentioned in the succeeding sub-clauses to see how impossible it is to arrive at any such conclusion. For instance, such powers as the power to establish, construct and manage harbours, docks, hydraulic and electrical works, factories and workshops, and as the power to acquire mines and mining rights, and to carry on the business of mining, seem to me to negative the idea that the sole object of the Company was as simple and restricted as is suggested.

Reading the memorandum as a whole I am of opinion that the real object of the Company is to carry out a wide scheme for the acquisition and the agricultural and commercial development of land in the prescribed area and for the colonisation of that land by members of the Jewish race.

Such a scheme (whatever may have been the motive of its promoters for its establishment) is in my judgment altogether outside the purview of the preamble to the statute of Elizabeth; the purpose which the scheme is designed to effect is not one of the purposes mentioned in the preamble nor is it analogous to any of those purposes.

The first contention on behalf of the Company was that the purpose for which the Company was formed was the advancement of the Jewish religion.

Article 25 of the articles of association vests the supreme control of the affairs of the Company in a committee constituted under the regulations of the Zionist congress, it is evident therefore, that the Company's activities are closely connected with the Zionist movement which I understand to be a movement for securing national privileges and territory for the Jews, especially in Palestine.

Dr. Feldman stated in evidence that in his view the objects of the Company were religious and that this view was mainly based upon Leviticus, chapter 25, verses 23 and 24. It would seem, therefore, that in his view the dominant purpose of the Company was the restoration of the Holy Land to the Jews and the ultimate establishment there of a theocratic constitution. If that be the true view, political and racial considerations would enter largely into the scheme and it could not be said that the only purpose for which the Company was established was the advancement of religion. Moreover, I doubt whether the Courts of this country would countenance or give effect to any scheme the carrying out of which

(Lawrence, L.J.)

might bring the Company and its members into conflict with the ruling powers in Palestine (see *Habershon v. Vardon*, 4 De Gex & Smale 467).

In view of the Company's connection with Zionism and of Dr. Feldman's evidence, it looks as if the true motives of the founders were that the Company, by the exercise of its powers, should try to procure the population of the prescribed area by a preponderating number of Jews as a step towards establishing a Jewish theocracy in Palestine.

However that may be, the answer to the Company's contention on this part of the case is that the Court is not concerned with the motives or ultimate aims of the founders nor with the opinion expressed by Dr. Feldman, or by any other expounder of the Rabbinic Law, as to the true character of the objects of the Company, but is solely concerned with the meaning and effect of the language used in the memorandum.

Reading the memorandum apart from any preconceived notions as to the aims and aspirations of the founders, it will be observed that the primary object of the Company is the settlement of Jews on land to be acquired in any part or parts of a large territory including not only Palestine but also the Peninsula of Sinai and the whole of Asiatic Turkey, and the development of the land so acquired, and that there is no mention of the advancement of the Jewish religion or of any other religious object. In these circumstances it is impossible to avoid the conclusion that the Company is not established for the advancement of religion.

The second contention on behalf of the Company was that the Company was established for the relief of poverty. This contention is based on the use of the expression "for the purpose of settling Jews on such lands" at the end of sub-clause (1) of clause 3 of the memorandum. It was said that the word "settling" connotes poverty and, consequently, that the primary object of the Company is confined to assisting poor Jews to take up their abode in the prescribed area. I find it impossible to give any such restricted meaning to the word "settling" in the context in which it occurs. The relief of poverty is not mentioned, and it is plain from the other objects of the Company that its so-called primary object is not confined to settling poor Jews on the lands to be acquired, though no doubt it would include the settlement of such Jews. The development of those lands evidently formed a prominent feature of the scheme as set forth in the memorandum. For instance, it would clearly be *intra vires* the Company to build suitable dwelling-houses and homesteads on its land for Jewish doctors, lawyers, engineers and farmers, and to induce Jews following those avocations to settle in such houses and homesteads, leases of which could be granted to them at economic rents. The memorandum contemplates (*inter alia*) the erection of factories and

(Lawrence, L.J.)

consequently the settlement of manufacturers, and many other examples might be given of settling Jews in the prescribed area under the scheme in which the relief of poverty would play no part. I am therefore driven to the conclusion that the purposes for which the Company was established are not confined to the relief of poverty.

The third contention on behalf of the Company was that even if the Company was not established for the advancement of religion or for the relief of poverty, yet it was established for a purpose beneficial to the Jewish community and consequently fell within the fourth division of the well-known classification of charities enunciated by Lord Macnaghten in *Pemsel's* case [1891] A.C., at page 583⁽¹⁾.

The difficult question whether or not a particular purpose, not coming within the first three divisions of Lord Macnaghten's classification, is a charitable purpose in the legal sense on the ground that it is beneficial to the community, has been dealt with in numerous reported cases. It has been pointed out in several of these cases that Lord Macnaghten in describing the fourth class of charities did not mean that every purpose beneficial to the community was necessarily charitable, but that what he really meant was that besides the purposes mentioned in the first three classes there were other miscellaneous charitable purposes which could conveniently be classed under the head of "other purposes beneficial to the community not falling under any of the preceding heads;" see, for example, *In re Macduff*, [1896] 2 Ch. 451, in which case Lord Justice Lindley stated the rule applicable to this kind of case as follows (page 467): "We must fall back upon the statute of Elizabeth, not upon the strict or narrow words of it, but upon what has been called the spirit of it or the intention of it. As Lord Eldon says, this Court has taken great liberties with charities; but the liberty is always restricted by falling back . . . upon the statute of Elizabeth."

Before *re Macduff* was decided, the statute of Elizabeth had been repealed by the Mortmain and Charitable Uses Act, 1888, but in view of the fact that Section 13 (2) of this Act recites the preamble to the statute of Elizabeth and recognises it for certain purposes, the reference by Lord Justice Lindley to the statute of Elizabeth in his statement of the rule was substantially accurate; at all events the rule has been acted upon by the Courts after as well as before the repeal of that statute.

Further, it is well established that the fact that the members of the Company are prohibited from receiving any profits is not sufficient of itself to stamp the Company as a Company established for charitable purposes only, although no doubt that fact has to be taken into consideration.

(¹) 3 T.C. at p. 96.

(Lawrence, L.J.)

On the other hand, the fact that the section of the community to be benefited includes both rich and poor persons does not necessarily prevent the purpose from being charitable in the legal sense (see *Goodman v. Mayor of Saltash*, 7 A.C. 633).

I have already expressed my opinion that the object for which the Company was established does not come within either the words or the spirit of the statute of Elizabeth and I have indicated the considerations which have led me to that conclusion; I will only add that I agree with the conclusion reached by Mr. Justice Rowlatt that the dominant purpose of the Company, as described in the memorandum, is not so much to benefit the great number of Jews who are contentedly living and earning their livelihood in various parts of the world remote from the prescribed area as to secure that the land in Palestine and the neighbouring territories should be populated by members of the Jewish race and should be developed commercially and agriculturally. Such a purpose cannot in my judgment properly be said to be wholly charitable even in the wide sense in which that term has been interpreted by the Courts of this country.

In view of the general and sweeping terms in which the objects of the Company are described in the memorandum the Company can, in the prescribed area, embark, without let or hindrance, upon all sorts of undertakings (both public and private) which are not charitable in the legal sense, although some or all of such undertakings might well be of material advantage to persons (of whatever race or religion) living in or travelling through that part of the prescribed area where the undertakings were set up. In those circumstances although the Company under its wide powers may no doubt embark upon strictly charitable enterprises, yet it cannot properly be said to be a Company established for charitable purposes only within the meaning of Section 37 of the Income Tax Act, 1918.

For these reasons I agree with the conclusions reached by the Special Commissioners and by the learned judge and am of opinion that this appeal should be dismissed.

Slessor, L.J.—By Section 37 (1) (b) of the Income Tax Act, 1918, exemption from tax is to be granted in respect of any yearly interest or other annual payment forming part of the income of any body of persons established for charitable purposes only, or which according to the rules or regulations established by Act of Parliament, charter, decree, deed of trust or will, are applicable to charitable purposes only, and so far as the same are applied to charitable purposes only.

The Appellants are an association limited by guarantee, not having a capital divided into shares, incorporated under the Companies Acts; the certificate of incorporation is dated 8th April, 1907.

(Slessor, L.J.)

We have been asked to consider the practice of this Association in disposing of its funds, but such a consideration cannot assist the Court to decide whether the Association is or is not established for charitable purposes only, though it may be relevant when the further question is asked how far the same are applied to charitable purposes only. To determine the first essential question it is necessary to confine the attention to the actual language of the instrument constituting the Association.

This Association, being a limited company incorporated under the Companies Acts, possesses a constitution which is contained in the memorandum and articles of association. It is expressly provided at the end of clause (3) of the memorandum, which sets out the objects of the Association, that "The primary object of the Association shall be and is hereby declared to be the object specified in sub-clause (1) of that clause, and the powers conferred by the succeeding sub-clauses are to be exercised only in such a way as shall in the opinion of the association be conducive to the attainment of the said primary object."

This primary object is as follows: "To purchase, take on lease or in exchange, or otherwise acquire any lands, forests, rights of possession and other rights, easements and other immovable property in the prescribed region (which expression shall in this Memorandum mean Palestine, Syria, any parts of Turkey in Asia and the Peninsula of Sinai, or any part thereof) for the purpose of settling Jews on such lands."

I have given much attention to the argument that whether the primary purpose is or is not charitable, the many very general powers contained in the subsequent sub-clauses of the object clause make it impossible to say that in any event the objects of the Association as a whole are for charitable purposes only. A conclusion upon this point may be very important, because the objects other than the primary object are undoubtedly expressed in very wide terms. They include powers to deal in one way or another with railways, factories, workshops, mines and personal property, with power to purchase and carry on businesses suitable for the purposes of the Association, and with power to promote any companies for any purpose which may seem likely directly or indirectly to benefit the Association. This last power speaks of purposes which seem likely to benefit the Association and the language is not easy to reconcile with the proviso that the sub-clauses containing the powers shall be exercised only in such a way as shall be conducive to the attainment of the primary object—that of settling Jews—it points to any purpose which may benefit the Association rather than one to promote the primary object only. There are many other powers which have already been mentioned by the Master of the Rolls and Lord Justice Lawrence which I forbear to repeat.

(Slessor, L.J.)

Secondly, it must be noted that the Association itself is made by the memorandum the judge whether the general powers are or are not exercised only in such a way as shall be conducive to the attainment of the primary object. Thus, if the Association were to be reasonably of opinion that the exercise of any of the powers taken was conducive to the attainment of the primary object, it would scarcely be possible to say that such an exercise was *ultra vires*. The Company would not be abandoning the business for which it was established and undertaking another, according to the principles established in *Simpson v. Westminster Palace Hotel Company*, 8 H.L. 712, and the many cases which have followed it. There may, indeed, be a general philanthropic purpose running through the constitution and objects of this Association, but such philanthropic purposes will not necessarily be charitable within the proper meaning of that word so as to constitute the purposes of the Association purposes which are charitable only. (See *In re Macduff*, [1896] 2 Ch. 466, and the cases there cited.)

Apart from the limitation to charitable purposes "only", the phrase "charitable purpose" in the Section bears the same meaning as in the general law (*Special Commissioners v. Pemsel*, [1891] A.C. 531⁽¹⁾). Sir John Simon has based a claim here on all the four well-known definitions of charity contained in the judgment of Lord Macnaghten, following the argument in *Morice v. Bishop of Durham*, 9 Vesey 399, in *Pemsel's* case. I propose to deal with these in the order in which he argued them.

First, he argues that the primary object above cited is an object for the advancement of religion, Lord Macnaghten's third class, but it is to be observed that no specific reference to religion is made in the memorandum at all. We are asked to inform ourselves from sources other than the memorandum itself that the object of acquiring land in the prescribed region for the purpose of settling Jews on such land is a religious object according to the Jewish faith. Without in any way disputing or assenting to this proposition, I feel a difficulty in applying it in the present case, for two reasons: in the first place because, as I have indicated, there is nothing in the constitution of this Association, which alone we have to look at, to support this contention, and further, because the description of the religious obligation which is set out in the case, more particularly in the affidavit of Solomon Kaplansky, that the land of Palestine is to be made the common property of the Jewish people, is not co-extensive with the definition of the prescribed region in clause 3 (1) of the memorandum, which expression is there said to mean Palestine, Syria, any parts of Turkey in Asia and the Peninsula of Sinai or any part thereof. It is necessary to satisfy the statute that the purposes relied upon shall be charitable purposes only, and although the Commissioners appear to have found that the Association (which is said by the Case stated to be part of the

(1) 3 T.C. 53.

(Slessor, L.J.)

Zionist organisation) has for its objects and function the acquisition in perpetuity of land anywhere in the Holy Land, the memorandum in terms includes among the territory on which Jews may be settled the whole of Turkey in Asia and Syria as part of the prescribed region. Thus, so far as the settlement of Jews in parts of the prescribed region other than the Holy Land is concerned, the purpose could not be religious, even on Dr. Feldman's evidence or on Mr. Kaplansky's view as contained in his affidavit annexed to the Case, and thus, in any event, at most only a part of the purposes of the Association would be charitable as being religious, and the purposes as a whole would not be charitable only.

Secondly, it was argued that there was here a charitable purpose for the relief of poverty, Lord Macnaghten's first class. It was said that the phrase in clause 3 (1) of the memorandum, "settling " Jews on such lands," imports the relief of the indigent. This argument seems to me to some extent to conflict with the religious argument, for on the basis of religion it is clear that no distinction can be made regarding the economic status of Jews; from the religious aspect all Jews are said to be equally the subject of settlement in the Holy Land. But I think the argument as to the relief of poverty should be considered by itself, unaffected by any apparent difficulties produced by the former argument which I have rejected. Some guidance as to the meaning of the word "settling" on which reliance is to be placed is to be found in sub-clause (3) of clause 3 of the memorandum. In that sub-clause one object for which the Association is established is said to be "to let any of the land or "other immovable property of the Association to any Jews upon "any terms." I think that while it may well be that the object of settling Jews may not necessarily involve the letting of land to them, yet I think that sub-clause (3) does indicate that the letting of land to any Jews upon any terms is one method of settling them, so that at any rate to some extent it is contemplated that the settlement may be achieved through the payment of rent by the settlee, and, in sub-clause (8) of the memorandum there is express power given to collect rents. I am inclined to agree that the word "settlement" does include, on the face of it, in part, an assistance of the indigent, but the phrase is indefinite and may well cover the settlement of those who are not indigent. In *In re Sidney*, [1908] 1 Ch. 126, where a bequest in trust was "for such charitable "uses or for such emigration uses or partly for such charitable uses "and partly for such emigration uses" as the trustees shall think fit, the bequest was held to be void for uncertainty, as emigration uses are indefinite, and are not necessarily charitable. It was there argued that though rich persons may emigrate they do not require assistance, nor are they called emigrants. At page 129, Mr. Justice Swinfen Eady, as he then was, said: "Emigration is not confined to the poor

(Slessor, L.J.)

“ . . . there are many modes of application that would come within the phrase ‘ emigration uses ’ but would not come within the assistance of poor persons.” I think the like observation is appropriate to the word “ settle ”. I find it, therefore, impossible to hold that the settling of Jews on lands in the prescribed region without qualification is a purpose for the relief of poverty only or is a charitable purpose only.

The second limb of Lord Macnaghten’s definition, the advancement of education, is not in terms mentioned in the memorandum, though it does appear in fact that much money has been devoted to this object, and I pass, therefore, to the fourth definition, namely, “ trusts for other purposes beneficial to the community not falling under the preceding heads ” of poverty, education and religion.

Under this head it is not necessary to confine the charity to the poor to the exclusion of the rich (see *Goodman v. Mayor of Saltash*, (1882) 7 A.C. 633; *Verge v. Somerville*, [1924] A.C. 496). It is pointed out by Mr. Justice Rowlatt that the constitution of the Association eliminates any idea of private profit. He holds, and I agree with him, that the primary purpose of this Association is to populate the Holy Land with a particular class of inhabitant. My only qualification would be to substitute the words “ prescribed region ” for Holy Land, but in considering whether the purpose is for a charitable purpose as being “ for purposes beneficial to the community,” this amplification of object is not perhaps very material.

It may be said that there is a degree of uncertainty about the word “ Jew ” which makes it difficult to say that they are sufficiently a community to be benefited as a charity and that the alleged charity is bad for uncertainty. In this view, it may be urged that it is not clear in the articles of this Company whether the power to settle is to be confined to persons practising the Jewish religion, which may include persons not of Jewish race (such, for example, as the late Lord George Gordon who, after becoming notorious in leading the anti-Catholic riots in the early days of the last century, became a Jew) or whether it extends to persons wholly or partly of Jewish race who are not members of that religious communion. But I have come to the conclusion that, giving a fair construction to the whole objects of the Association, the persons to be benefited are persons who are Jews in the religious sense, whatever may be their racial origin. If this be so, I think that such persons may fairly be called a community. In the words of Lord Wrenbury in *Verge v. Somerville*, in giving the judgment of the Privy Council : “ To ascertain whether a gift constitutes a valid charitable trust . . . a first enquiry must be made whether it is public—whether it is for the benefit of the community or 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

(Slessor, L.J.)

“ the objects of such a gift, but private individuals, or a fluctuating body of private individuals, cannot.” After pointing out that poverty is not a necessary exclusive ingredient, he draws attention to the *Christ Church Inclosure* case, 38 Ch. D. 520, in which Lord Justice Lindley said at page 530 : “ Although the occupiers of these cottages may have been, and perhaps were, poor people, the trust is not for the poor occupiers, but for all the then and future occupiers, whether poor or not. . . . The trust is for a comparatively small and tolerably well-defined class of persons. . . . The class, however, though limited, is as to its members uncertain, and is liable to fluctuation, and the trust for the class is perpetual.”

As regards uncertainty of the class to be benefited, the word “ Jew ” in English law has almost always been confined to persons practising the Jewish religion ; the disabilities of Jews have not attached to persons of Jewish race who have become baptized. Thus, they are generally described in Acts of Parliament and in legal documents as persons practising the Jewish religion (see the Toleration Act, 1846) and Jewish religious endowments and trusts are now recognised and executed by the Courts and regarded as charitable purposes (*re Michel's Trust*, 1860, 28 Beavan 39). The Ballot Act of 1872 speaks of voters of Jewish persuasion. In *re Cohen*, 36 T.L.R. 16, Mr. Justice Peterson appears to have treated a bequest for the benefit of deserving Jewish girls on their marriage as being for the benefit of Jewish religion and thus gave to the word “ Jewish ” its religious denotation.

There is recent authority for saying that the fact that the persons to be benefited may be aliens and their benefit to take place abroad will not prevent such persons being a part of the community for charitable purposes. In *re Robinson*, 47 T.L.R. 264, Mr. Justice Maugham decided that a testamentary gift to the German Government for the time being for the benefit of its soldiers disabled in the war was a valid charitable gift. He said, at page 265 : “ There was no objection to the gift from the point of view that the persons who were the object of the charity were abroad,” and he did not see “ how it could be contrary to public policy to benefit persons who had been enemies and had ceased to be enemies.”

For these reasons, were the purposes of this Association confined to the settlement of Jews in the prescribed region, I should have hesitation in saying that the purposes were not the benefit of a class of the community only within the intent of the Elizabethan statute, and thus charitable purposes within Section 37 of the Act of 1918. The ground on which I have come to the conclusion that the Appellants fail in bringing themselves within this definition is because of the breadth of the powers contained in their memorandum, which may all be philanthropic but are certainly not necessarily all charitable. As I have already said, the memorandum

(Slessor, L.J.)

constitutes the Association the judge of how far the exercise of these very general powers is or is not conducive to their primary object, so that even were it possible to say that some of the purposes of the Association were charitable, it is not possible to say that its income is applicable to charitable purposes only.

For this reason I think that this appeal must be dismissed.

Mr. Hills.—The appeal will be dismissed with costs?

Lord Hanworth, M.R.—Yes, with costs.

The Company having appealed against the decision in the Court of Appeal, the case came before the House of Lords (Lord Tomlin, Lords Warrington of Clyffe, Thankerton, Macmillan and Wright) on the 9th and 10th May, 1932, and on the latter date judgment was given unanimously in favour of the Crown, with costs, confirming the decision of the Court below.

Mr. N. Bentwich, Mr. H. Infield and Mr. L. Stein appeared as Counsel for the Company and the Attorney-General (Sir T. H. Inskip, K.C.), Mr. J. H. Stamp and Mr. R. P. Hills for the Crown.

JUDGMENT.

Lord Tomlin.—My Lords, this is an appeal from an Order of the Court of Appeal affirming an Order of Mr. Justice Rowlatt, he on his part having affirmed the decision of the Commissioners for the Special Purposes of the Income Tax Acts upon a case stated by the Commissioners for the opinion of the Court.

The question arises under Section 37, Sub-section (1) (b) of the Income Tax Act, 1918, under which exemption is granted "from tax under Schedule C in respect of any interest, annuities, dividends or shares of annuities, and from tax under Schedule D, in respect of any yearly interest or other annual payment forming part of the income of any body of persons or trust established for charitable purpose only, or which, according to the rules or regulations established by Act of Parliament, charter, decree, deed of trust, or will, are applicable to charitable purposes only," and so far as the same are applied to charitable purposes only." The Appellant in this case seeks exemption under that Section.

The Appellant is an Association limited by guarantee and not having a capital divided into shares. It was incorporated in April, 1907, and is no doubt an Association connected with what is known as the Zionist movement.

The memorandum and articles of association provide for a number of matters, to some of which it is necessary to refer.

Clause 3 of the memorandum provides for the objects of the Association. Sub-clause (1) is as follows :—“(1) To purchase, take

(Lord Tomlin.)

“ on lease or in exchange, or otherwise acquire any lands, forests, rights of possession and other rights, easements and other immovable property in the prescribed region (which expression shall in this memorandum mean Palestine, Syria, any other parts of Turkey in Asia and the Peninsula of Sinai) or any part thereof, for the purpose of settling Jews on such lands.”

Then, in the subsequent sub-clauses, there follow a number of objects of a very varied kind, conferring the widest possible powers. There is a power to clear, cultivate, irrigate or otherwise improve the lands of the Association; power to let any of the lands or other immovable property of the Association to any Jews upon any terms; power to construct and maintain roads, ways, tramways, railways, bridges, viaducts, aqueducts and a number of other works of public utility; power to purchase or otherwise acquire, and to sell, dispose of, work, develop, deal with and otherwise turn to account mines and mining rights and to carry on the business of mining in any part of the prescribed region, but with a prohibition against anything enabling the Association to divest itself of the paramount ownership of any of the soil of the prescribed region, which it may from time to time acquire. Some importance is attached to that limitation. Then there is power to purchase or otherwise acquire and undertake all or any part of the business, property and liabilities of any person or company carrying on any business which the Association is authorised to carry on; power to acquire from any government or other authority concessions and the like; power to sell, mortgage, exchange, grant licences, easements and other rights in respect of and over, and in any other manner deal with or dispose of or turn to account the undertaking, and all or any of the property and assets for the time being of the Association; and there is a similar qualification against the Association divesting itself of the paramount ownership of the soil. There is also power to borrow or raise money, to make, accept, endorse and execute negotiable instruments and bills of exchange; power to promote any companies for any purpose which may seem likely, directly or indirectly, to benefit the Association and to acquire, hold and deal with shares or other interests in any such company; power to enter into any arrangement for sharing profits, union of interests, joint adventure, or co-operation with any person or company carrying on or about to carry on any business which the Association is authorised to carry on. There are a number of other very wide and general powers.

Then at the end of clause 3 there is this proviso: “ Provided also that the primary object of the Association shall be and is hereby declared to be the object specified in sub-clause 1 of this clause, and the powers conferred by the succeeding sub-clauses of this clause shall be exercised only in such a way as shall in the opinion of the Association be conducive to the attainment of the said primary object.”

(Lord Tomlin.)

Then clause 4 provides: "The income and property of the Association, whencesoever derived, shall be applied solely towards the promotion of the objects of the Association, as set forth in this memorandum of association, and no part thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus, or otherwise howsoever by way of profit, to the members of the Association." In the same way, there is a provision that in a winding-up the members are to take nothing.

In clause 7, there is a provision that "Unless and until an order shall have been made or an effective resolution shall have been passed for the winding-up of the Jewish Colonial Trust, Limited"—that is, another company connected with the Zionist movement—" . . . no person shall be capable of becoming a member of the Association who is not a holder, either solely or as one of two or more joint holders, of founders' shares or a founder's share in the said Jewish Colonial Trust." After an order has been made for winding-up that Trust "no person shall be capable of becoming a member of the Association who is not a member of some body which shall for the time being be carrying on an undertaking similar to and in succession to the undertaking of the said Jewish Colonial Trust or of some other body designated by special resolution of the Association."

Under the articles there is what is called a controlling committee, the purpose of which is really to act as a delaying committee, that is to say, it can veto the exercise by the directors of any of their powers until either the controlling committee or the Association in general meeting resolve to the contrary. That controlling committee are persons who from time to time form the small actions committee, constituted by or under the rules or regulations adopted or recognised by the most recent Zionist Congress for the time being. So there is a body nominated by the Zionist Congress which has an element of control over this Association.

Now the claim of the Association is that certain funds which it holds—some £32,000 invested in Consols of this country, the Association itself being an English company—are exempt from Income Tax under the Section which I have read, on the ground that it is an institution established for charitable purposes only within the meaning of the Section. Those funds in fact, I understand, are the result, in the main, of donations which various persons have made to the Association, but it is not disputed that they form part of the general funds of the Association and are not the subject of any special trust. Therefore the question arises under the first part of Sub-section (1) (b) of Section 37.

The Courts below have reached a conclusion that this is not an institution established for charitable purposes only, and the Appellant complains of the Orders that have been made by the Courts below substantially on three grounds. It is said the Association

(Lord Tomlin.)

is an institution established for charitable purposes only, first, because it is really established for a religious purpose; secondly, because, if it is not established for a religious purpose, it is established for the benefit of a community within the meaning of those cases in which it has been held that a trust fund is held on a good charitable trust if it is held upon trusts which are beneficial for the community or some class of the community; thirdly, because if the case cannot be made good on either of those heads, it still may be made good as being a trust which is for the benefit of poor Jews.

I will consider the matter under each of those three heads.

With regard to the submission that this is a good charitable trust for religious purposes, the case is put in this way: It is said, and no doubt truly, that the return of the Jews to the Promised Land is an element of great importance in their religion and their religious life. Attention is called to the texts in which the promises were made to Abraham. It is pointed out that in those texts—and the one in the fifteenth chapter of Genesis is taken as an illustration—the promise in relation to the Land extends beyond what is commonly called the Holy Land or Palestine, and that the Promised Land includes more than that. The eighteenth verse of the fifteenth chapter of Genesis is in these terms: "In the same day the Lord made a covenant with Abram, saying, Unto thy seed have I given this land, from the river of Egypt unto the great river, the river Euphrates." The nineteenth and following verses refer to the Kenites and the Kenizzites and the Kadmonites, and a number of other tribes. It is said that this promise covers a wider area, as no doubt it does, than Palestine, in the ordinary acceptance of that term as a geographical term. On the other hand, it may be said that the precise geographical limits indicated by those verses is somewhat obscure, but this I think is certain, and is recognised quite fairly by counsel for the Appellant, that the first sub-clause of article 3 of the memorandum goes beyond any area which, on any view of these texts, could be comprised in the terms used. The prescribed region in sub-clause (1) of article 3 is defined in this way: "which expression shall in this memorandum mean Palestine, Syria, any other parts of Turkey in Asia and the Peninsula of Sinai."

Now it must be remembered that these articles of association were framed in the year 1907 and the extent of Turkey in Asia at that time was considerable; it extended much beyond Palestine and Syria, and certainly included, as it does to-day, Asia Minor and no doubt other regions. Asia Minor and other regions outside Syria and Palestine could not, on any view, be treated as included in the region covered by the description in Genesis. However, bearing that in mind, the point is this, and this is the way it is put—it is said that it is an essential part of the Jewish religion to look forward to the return of the race to the Promised Land and that this is apparent not only from the texts of Scripture but from Rabbinical

(Lord Tomlin.)

writings, from the daily prayers and from other matters connected with the Jewish religion. Indeed, it is put in two ways. It is said first that there are many commandments of the religion which cannot be effectively performed except in the Promised Land and, secondly, that it is only with Judaism established in the Promised Land that the real influence of Judaism can be properly exercised. That being so, it is an essential part of the Jewish religion that daily the devout Jew should pray for the return of the race to the Promised Land and it is to him of the very essence of his religion that the race should so return. Basing themselves upon that, which I accept absolutely as an accurate statement of the Jewish feeling in the matter, the Appellant says that we must construe this memorandum and articles of association so as to give it the sense of establishing an Association for charitable purposes.

My Lords, I think myself that argument must fail. We are concerned here only with the language which is employed in this memorandum before us. There is not a word in that which can suggest anything of a religious character. It is quite true that the minds of those who are intimately concerned with the working of this Association may be affected by religious motives and religious sentiments in taking the part they do in the work which this Association performs, but, none the less, the object of the Association is not to do something which is in itself religious; it is not, in any sense in which the words as English words can be construed, creating a trust for the advancement of religion. It is only when you go subjectively to the minds of those concerned that you are able to introduce any element of the kind at all. If the arguments of learned Counsel in favour of this view were well-founded it seems to me that such articles as these might have a different meaning and effect according to the character of those who happened to be the promoters concerned in the working of the Association.

But, whether that be well-founded or not, there are other reasons why it seems to me the argument must fail. There are a great number of objects in this memorandum. They are all expressed to be ancillary to the main object and I well appreciate the argument which says that if you once find the main object is charitable you cannot destroy the charitable character of the main object because the ancillary powers, which are incidental to it, are, some of them, in themselves, not charitable. That argument may indeed be well-founded, but when the question is whether the primary object is itself charitable, it is legitimate, in reaching a conclusion upon that head, to consider the effect of the incidental powers, and it may well be that the incidental powers are such as to indicate or give some indication that the primary object is not itself charitable. I confess I feel great difficulty, in the face of the elaborate powers of a non-charitable character which are contained in this memorandum, in

(Lord Tomlin.)

saying, quite apart from any other reason, that sub-clause (1), which in itself has no language directly indicative of charitable purposes, is to be construed as charitable.

But there is another reason which seems to me disastrous to the Appellant's argument on this head, and that is the prescribed region itself, because the whole argument with regard to the religious element is linked up with the return to what they call the Promised Land and, in fact, this region is far wider than the Promised Land on any construction of the Promise.

Even if they are right in the view they take about an activity to settle Jews in the Promised Land, it seems to me that the moment you find the activity is not only to settle Jews in the Promised Land but to settle Jews in lands which are not and never have been part of the Promised Land, you have a combination of objects, religious and non-religious, which cannot be separated, and this combination is fatal to the contention that this Association is established for charitable purposes only. In my view, therefore, the first point, that this is a religious charity, necessarily fails.

Then the next point is that, if it is not religious, it is said to be beneficial to the community. I have great difficulty, as indeed counsel for the Appellant had, in identifying the community. They suggest some alternatives. First of all, they suggest that the community is the community of all the Jews throughout the world. That seems to me to be very difficult. They next suggest that it is the Jews in the prescribed region, but I have great difficulty in seeing why they should be the community, because, although the Jews who are to be settled under the objects no doubt include Jews in the prescribed region, there are also included Jews outside the prescribed region, and whether a settling of Jews from outside the prescribed region is for the benefit of Jews within the prescribed region—it may or may not be; I do not see any indication one way or the other—I think it is extraordinarily difficult to say that there is really any community within the meaning of the cases to be found in the circumstances before your Lordships' House.

My Lords, that leaves the third point—the poverty point. I confess that this point seems to me very difficult to advance consistently with the argument which has been put before your Lordships on the point that the Association is an institution for religious purposes. The two things do not seem to me to be really consistent, but on the merits of the point I confess I am unable to see how, by any straining of the language, this can be limited to poor Jews. Article 3, sub-clause (1) is "for the purpose of settling "Jews on such land." It is suggested that there can be got out of the word "settling" some element which suggests poverty and reference is made to the case of the repatriation of Australian soldiers, *Verge v. Somerville*, [1924] A.C., page 496. where it was said that the word "repatriating" connoted something suggestive

(Lord Tomlin.)

of poverty ; but I am unable to find in this word any such element at all. Indeed, it is legitimate to refer to some other of the articles, which may not be decisive on the matter, but which seem to me to point against the contention of the Appellant. For example, sub-clause (3) of article 3 contains power " to let any of the land or other " immovable property of the Association to any Jews upon any " terms." Although, as I say, it is not decisive on a point of this sort, it is certainly an element which points against it, and I think there is not sufficient in the language employed to justify the conclusion that any element of poverty is an essential part of the scheme which the memorandum embodies.

My Lords, for these reasons I think that this appeal must fail, and I move your Lordships that it be dismissed with costs.

Lord Warrington of Clyffe.—My Lords, I agree, and have nothing to add.

Lord Thankerton.—My Lords, I agree with the opinion which has just been delivered by my noble and learned friend on the Woolsack. I would also like to express my concurrence in particular with the judgment of Lord Justice Lawrence in the Court of Appeal, which seems to me to deal very fully and very adequately with the matter before your Lordships.

There is only one point upon which I would like to add a sentence or two, and that is on the question of the claim that this is a trust for purposes beneficial to the community. The first ground on which it was put, as my noble and learned friend has just said, was that it was for the benefit of Jews all over the world. My Lords, I desire to say on that point that I also do not think that that can be described as a community in the sense in which that word is used in this connection. It seems to me that " community " predicates the existence of some political or economic body settled in a particular territorial area and that the trust must be for that political or economic unit or a particular class within that particular political or economic unit.

The alternative ground on which it was sought to bring this trust within that class was in the view that it was for the benefit of Jews within the prescribed area. In addition to the comment, which would be fatal in itself, that those Jews may include people who are not actually within the prescribed area at all, again it does seem to me more than doubtful if you have a community in the sense which I have suggested, because the area here is an enormous area with no political or economic homogeneity between the various parts of the area. It is quite indefinite and I doubt very much whether, on that head, there is a community in which even the Jews who are settled within the prescribed region could be described as a particular class.

Lord Macmillan.—My Lords, the question in this appeal is really a very short one on ultimate analysis. It is whether the Appellant Company are a body of persons established for charitable purposes only. The memorandum of association of the Company expresses the purpose of the Company in the clearest possible way. The Association is stated to have been established with the object of entering into certain transactions and carrying on certain activities, all for the purpose of settling Jews on lands in the prescribed region in Asia. The purpose being thus defined for us by the memorandum, the question is whether this purpose of settling Jews in a certain region of Asia is a charitable purpose.

My Lords, it has been suggested that while the transactions which may be entered into and the operations which may be carried on are ordinary enough operations of land acquisition, settlement and development, nevertheless, the motive which is behind all these transactions and operations is predominantly a religious motive. It may well be that those who propose to carry on these activities are in point of fact animated by religious motives, but I am afraid the Income Tax code applies a more objective test; it looks at the nature of the transactions; it looks at the character of the activities; and it does not look behind these to what may be the motive which has prompted the formation of the company.

For the reasons which my noble and learned friend on the Woolsack has already so fully expounded, I am quite unable to see that the purpose of settling Jews in this region can be described as a religious purpose, whatever may be the actuating motive, or as a charity having for its purpose the benefit of a certain section of the community, or as a charity for the relief of the poor.

These were the three categories into one or other or all of which it was suggested that this charity, if it be a charity, might fall. In my opinion, the Appellants have failed to bring it within any one of these categories and consequently have failed in what it was essential for them to make out, namely, that this Company is a body of persons established for charitable purposes only.

Lord Wright.—My Lords, I entirely agree with the opinion which has been delivered by the noble Lord on the Woolsack.

Questions put :

That the Order appealed from be reversed.

The Not contents have it.

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

The Contents have it.

[Solicitors:—Herbert Baron & Co.; Solicitor of Inland Revenue.]
