# VOL. XXVIII—PART VII

No. 1382—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION)—
20TH, 23RD AND 27TH JULY, 1945

COURT OF APPEAL—20TH, 21ST AND 22ND NOVEMBER AND
20TH DECEMBER, 1945

HOUSE OF LORDS—25TH, 27TH AND 28TH FEBRUARY, 3RD AND 4TH MARCH
AND 2ND JULY, 1947

## COMMISSIONERS OF INLAND REVENUE *v.* NATIONAL ANTI-VIVISECTION SOCIETY(1)

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

*The Respondent Society was a voluntary society governed by rules. Its object, as set out in the rules, was " to awaken the conscience of mankind " to the iniquity of torturing animals for any purpose whatever; to draw " public attention to the impossibility of any adequate protection from torture " being afforded to animals under the present law; and so to lead the people " of this country to call upon Parliament totally to suppress the practice of " vivisection." In* 1898 *the Council of the Society passed the following explanatory resolution: " The Council affirm that, while the demand for " the total abolition of vivisection will ever remain the object of the Society, " the Society is not thereby precluded from making efforts in Parliament for " lesser measures, having for their object the saving of animals from scientific " torture."*

*The Commissioners of Inland Revenue refused the Society's claim to exemption from Income Tax for the year* 1942–43 *in respect of its investment income under Section* 37 (1) (*b*) *of the Income Tax Act,* 1918. *On an application by the Society to the Special Commissioners under Section* 19 *of the Finance Act,* 1925, *the Special Commissioners, while finding that, on the evidence (which included that of a number of eminent medical and scientific witnesses), " on balance, the object of the Society, so far from " being for the public benefit, was gravely injurious thereto ", considered that they were bound to hold, on the authority of In re* Foveaux, Cross *v.* London Anti-Vivisection Society, [1895] 2 Ch. 501, *and In re* Wedgwood, Allen *v.* Wedgwood, [1915] 1 Ch. 113, *that the Society was a body of persons established for charitable purposes only, its object of altering the law only coming in in a subsidiary way. They accordingly allowed the Society's claim.*

Held (*Lord Porter dissenting*), *that the Society was not established for charitable purposes only, because*:—

(a) *the securing of an alteration of the law was a main, and not a subsidiary, object of the Society: such an object was political, and, therefore, not charitable; and*

(b) *in considering whether the objects of the Society were for the public benefit, the Court was not bound to take intention as decisive, but should determine, on the evidence before it, whether on balance the objects would in fact benefit the community.*

*In re* Foveaux, Cross *v.* London Anti-Vivisection Society, [1895] 2 Ch. 501, *overruled.*

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(1) Reported (K.B.) [1945] 2 All E.R. 529; (C.A.) [1946] K.B. 185; (H.L.) [1948] A.C. 31.

CASE

Stated under the Finance Act, 1925, Section 19, and 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 8th, 9th and 10th December, 1943, the said Commissioners heard a claim by the National Anti-Vivisection Society (hereinafter called " the Society ") to exemption from Income Tax on investment income aggregating £2,876 15*s.* 7*d.* for the year ended 5th April, 1943, on the ground that the Society was a body of persons established for charitable purposes only, and, as such, was entitled to exemption from tax by virtue of Section 37, Income Tax Act, 1918. The said claim had been refused by the Commissioners of Inland Revenue (hereinafter called " the Appellants ") on the ground that, in their opinion, the Society was not such a body.

2. Evidence was tendered before us both on behalf of the Society and on behalf of the Appellants. This evidence was partly documentary and partly oral. The documentary evidence consists of the documents specified in the schedule of documents hereto annexed and therein numbered 1 to 62[1]. These documents are not annexed to this Case, but the parts which appear to us to be material are quoted in this Case. The documents specified in part I of the said schedule are published by the Society. The journal " The Animals' Defender " (of which documents numbers 9 to 29 are copies) is edited by the director of the Society and issued monthly. It is described in the Society's annual reports (e.g. that for 1941—document number 8) as " The Organ of the Society ".

3. The Society is a voluntary society governed by rules. As its name implies, its general purpose is that of opposition to " vivisection ", an expression which (as will be seen) includes experiments of every kind upon living animals. But before setting out the constitution and objects of the Society in detail it may be convenient to indicate shortly the statutory and other back-ground upon which those objects rest, as given in evidence before us:—

(*a*) The events antecedent to, and contemporaneous with, the setting up of anti-vivisection societies in general are conveniently set out at pages 5 to 6 of Sir Leonard Rogers' book " The Truth about Vivisection " (document number 49), as follows:—

" BRIEF HISTORY OF THE ROYAL COMMISSIONS ON VIVISECTION OF 1875 AND 1906.
" The present inquiry is enormously simplified by the fact that two Royal
" Commissions have reported unanimously on the subject after hearing
" evidence on both sides. Stephen Paget, in his work on experiments on
" animals, pointed out that the vivisection controversy originated in English
" medical journals in 1858 to 1861, and that with one insignificant exception
" the first anti-vivisection societies (henceforth called A.—V. societies) only
" came into existence in 1875 to 1876, at the time of or after the appointment
" of the Royal Commission of 1875. It was therefore largely at the instance
" of the medical profession itself that the inquiry of 1875 was held, and
" resulted in the passage of the Act of 1876 under which medical research
" through animal experiments has ever since been regulated in a manner
" approved by the medical profession, and under the control of the Home
" Secretary.

" Owing to the continued agitation during the next thirty years of the
" numerous, for the most part small, A.—V. societies, that sprang up after the
" 1875 Royal Commission had been appointed, some of which demanded

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[1] Not included in the present print.

"immediate legal abolition of all animal experiments and others restriction "preparatory to eventual total prohibition, the second Royal Commission "on the subject was announced in the spring of 1906."

(*b*) The Act referred to, which was passed as a result of the report of the first Royal Commission, is the Cruelty to Animals Act, 1876 (39 & 40 Vict., c. 77). Section 2 of that Act provides that a person shall not perform on a living animal any experiment calculated to give pain, except subject to the restrictions imposed by the Act.

These restrictions, however, are subject to certain qualifications which include provisions empowering experiments to be performed without anaesthetics upon a certificate of the Secretary of State that insensibility cannot be produced without necessarily frustrating the object of the experiments. By Section 8 the Secretary of State is empowered to grant licences subject to any conditions which he may think expedient for the better carrying into effect the objects of the Act but not inconsistent with the provisions thereof. By Section 9 the Secretary of State may require reports of experiments, and by Section 10 he shall cause all registered places to be visited by inspectors.

(*c*) The Secretary of State presents annually to the House of Commons a return of licences granted by him to perform experiments on living animals. Documents numbers 52 and 53 are copies of these returns for the years 1937 and 1938 respectively. Documents numbers 54 to 61 are forms relating to licences.

The purport of the various certificates issued by the Secretary of State, and the respective circumstances in which the same are required, are set out on page 2 of the Secretary of State's returns for 1937 and 1938 (documents 52 and 53). The general conditions laid down in practice by the Secretary of State with regard to the giving of certificates dispensing with anaesthetics are set out at pages 3 to 5 of the said annual returns.

On page 4 of the return for 1938 appears the following statement:—

"The experiments performed without anaesthetics, 908,846 in number, "were mostly inoculations and feeding experiments. In addition a "certain number consisted of oral administrations, inhalations, external "applications and the abstraction of body fluids. In no instance has a "certificate dispensing with the use of anaesthetics been allowed for an "experiment involving a serious operation.

"It will be seen that the operative procedures in experiments "performed under Certificate A., without anaesthetics, are only such as "are attended by no considerable, if appreciable, pain."

(*d*) The Secretary of State has appointed an advisory committee to assist him with advice in the administration of the Act. The names of the members of the committee in 1937 and 1938 are set out at page 6 of the said annual return of those respective years. The chairman of the committee was, in 1937, the Rt. Hon. Lord Atkin, and, in 1938, the Rt. Hon. Lord Justice du Parcq. The other members of the committee in each of these years were six eminent medical men.

(*e*) The second Royal Commission was appointed in 1906 and issued its final report in 1912. Document number 62 is a print of that report. The main conclusions of the Commission are set out at pages 47 and 57. Shortly stated, the Commission expressed the conclusions that—

(i) notwithstanding certain failures, valuable knowledge had been acquired in regard to physiological processes and the causation of disease, and that useful methods for the prevention, cure and treatment of certain diseases had resulted from experimental investigations upon living animals, and that it was highly improbable that without such experiments such knowledge would have been acquired;

(ii) in so far as disease had been successfully prevented or its mortality reduced, suffering had been diminished in man and in lower animals;

(iii) there was ground for believing that similar methods of investigation if pursued in the future would be attended with similar results; and

(iv) experiments upon animals, adequately safeguarded by law, faithfully administered, were morally justifiable and should not be prohibited by legislation.

The recommendations of the Commission are set out at pages 61 to 64, and summarised at page 65.

(*f*) In 1925 there was passed the Therapeutic Substances Act, 1925 (15 & 16 Geo. V, c. 60), which provided for the regulation of the manufacture, sale and importation of the four therapeutic substances set out in the Schedule to that Act, namely:—

(1) vaccines, sera, toxins, antitoxins and antigens;

(2) salvarsan and analogous substances used for the specific treatment of infective disease;

(3) insulin; and

(4) preparations of the posterior lobe of the pituitary body intended for use by injection.

The Act provides (*inter alia*) for prescribing the standard of strength, quality and purity of any of the said substances, and for prescribing the tests to be used for determining whether the standard so prescribed has been attained. As appears later from the evidence before us, the only means whereby the necessary tests can be carried out are experiments on living animals.

4. The Society was originally formed in the year 1875, that is to say, at the time of the first Royal Commission, and was then called " The Society " for the protection of Animals liable to Vivisection ". Later its name was changed to " The Victoria Street Society for the Protection of Animals from " Vivisection united with the International Association for the Total " Suppression of Vivisection." On 21st July, 1897, its name was again changed to its present name of " The National Anti-Vivisection Society."

The Society's rules have altered from time to time. By its latest rules, passed on 16th June, 1938 (document number 1), the Society consists of a president, vice-presidents, and members described as honorary members, life members, and annual members (rule 1). It is governed by a council (rule 3), which annually elects an executive committee (rule 14), which (subject to the supreme authority of the council) has the sole and entire management of the business of the Society and may appoint officials and servants (rule 15). The chief official of the Society is its director.

The Society's income is derived from subscriptions of members, donations, legacies and income from investments.

5. The present objects of the Society appear from its official publications set out in part I of the said schedule, and we refer in particular to the following:—

(*a*) Resolutions set out at the commencement of the book of rules (document number 1), as under:—

" THE NATIONAL ANTI-VIVISECTION SOCIETY

" *The following resolutions were passed by the General Meeting of the* " *Society, held on the* 21*st of July,* 1897.

" The title of the Society hitherto known as ' The Victoria Street Society " ' for the Protection of Animals from Vivisection united with the International " ' Association for the Total Suppression of Vivisection ' shall in future be " ' The National Anti-Vivisection Society '.

"The object of the Society is to awaken the conscience of mankind to the "iniquity of torturing animals for any purpose whatever; to draw public "attention to the impossibility of any adequate protection from torture being "afforded to animals under the present law; and so to lead the people of this "country to call upon Parliament totally to suppress the practice of Vivi-"section.

"On the 9th of February, 1898, the following explanatory resolution was "passed by the Council:—

"'The Council affirm that, while the demand for the total abolition of "'vivisection will ever remain the object of the National Anti-Vivisection "'Society, the Society is not thereby precluded from making efforts in "'Parliament for Lesser Measures, having for their object the saving of "'animals from scientific torture.'"

(b) The "policy" of the Society is set out in (*inter alia*) its annual reports (e.g. that for 1941—document number 8, page 2) as follows:—

"THE POLICY OF THE SOCIETY

"The Society advocates the total abolition of scientific torture of animals "and seeks to attain this object by every possible means. The Society does "not oppose, but on the contrary, supports, any and every measure, such "as the Dog's Protection Bill, for the amelioration of the present condition of "vivisected animals.

"Vivisection can be abolished as other great evils have been abolished, "that is, by means of a step by step policy—probably, indeed, the only means "by which the whole vile practice eventually will be suppressed. To clamour "for nothing but total abolition is simply beating the air, and delaying "perhaps irrevocably, the goal we most earnestly desire.

"All humane people who approve of these reasonable tactics, and are "desirous of seeing something practical done to save tortured animals, are "earnestly invited to support the National Anti-Vivisection Society."

(c) The sense in which the Society uses the word "vivisection", and the general aim of the Society, are further evidenced by (*inter alia*) the following statements in its publications, namely:—

*The Animals' Defender*—April, 1942 (document number 20), page 124. "Anti-vivisection Talk at Sevenoaks."

"The ordinary man or woman was unfortunately almost completely "ignorant of what vivisection meant, he said. Believing that what was "legalised in England could call for no adverse criticism, the ordinary person "remained ignorant of the cruel experiments perpetrated in the laboratories.

"Vivisection did not mean only the cutting up of live animals, but included "many other forms of experiment such as hypodermic injections, artificial "feeding and poisonous gas experiments. All these meant pain and misery "to the wretched victims so long as they remained alive.

"Vivisection experiments now numbered nearly a million yearly, and "in 1938 no less than 908,846 experiments were performed without an "anaesthetic."

This talk was given by Dr. Fielding-Ould, the director of the Society.

(The above figure of 908,846 is taken from the return of the Home Secretary for the year 1938, the relevant extract from which is set out in paragraph 3(*c*) above.)

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*A Short Book for Boys and Girls* (document No. 30), page 2.

"First, what is vivisection? You can look up in the dictionary to find "out the derivation of the word. But what it really means is:—Experiments

"done on bodies of living animals in order to find out scientific facts. Now "obviously if you cut up an animal, or give it some poisonous drug, or freeze "it—which is the sort of thing they do in these experiments—you are "liable to cause the poor creature great pain. And it is because we strongly "object to such cruelty that we want to get vivisection stopped by law, and "therefore we call ourselves anti-vivisectionists."

. . . . . . . . . . . . . . .

*The Animals' Defender*—January, 1943 (document number 24), page 35, article, "Think on these things", by Dr. R. Fielding-Ould (director of the Society).

"Let there be no mistake, there is a rising tide of indignation that "vivisection practices should continue to be permitted under a law of 1876 "already out of date and opposed in principle to the increasing distaste of "what, notwithstanding the war, will be we hope one day a gentler and more "humane race."

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*The Animals' Defender*—June, 1943 (document No. 26), page 7, article, "Do we understand?" by Dr. R. Fielding-Ould.

"It is a surprising and shocking fact that so few people are aware that "there is on the Statute Book such an Act of Parliament as the Cruelty to "Animals Act of 1876. From its title it might be supposed that the Act "was designed to prevent cruelty to animals, and when introduced that was "no doubt the intention of its promoters. But the Act has failed entirely, "and now is nothing more than a legal sanction to permit the perpetration "of odious experiments on living animals."

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*The Animals' Defender*—July, 1943 (document number 27), page 13, report of a speech by Dr. Fielding-Ould at the annual meeting of the Society.

"I think you will see from the few remarks I have made that our policy "is an active one and not a passive one. We intend as soon as it is possible to "have a whole-time agitation not only in Parliament but in all political and "social circles, which will organize our campaigns and, I hope, shake the "House of Commons into a better frame of mind."

. . . . . . . . . . . . . . .

Page 14, article, "Looking Forward", by Dr. R. Fielding-Ould.

"The bogus claim that vivisection benefits mankind having been exploded, "what possible justification remains for the continued and repeated cruelties "perpetrated behind locked doors in the laboratories which are increasing in "this country? That the experiments continue is due to the greed for money "and the hope of fame which lie at the bottom of the whole racket.

"There is undoubtedly in this country a stirring of the people for the "building of a better Britain, and in this connection a mere advance in "material conditions will not be enough. There must be a corresponding "advance in mind and thought, and all progress must be based on a truer, "deeper realization of spiritual values. With such an advance there will be "no room for vivisection, and we shall continue to exercise all our influence "to get the Cruelty to Animals Act repealed. We must get a new Act which "will, unlike the present one passed in 1876, not be chiefly used for the "protection of vivisectors. Our task is not easy and the battle will be hard, "for we have against us the strongly entrenched vested interests."

6. The Society's propaganda literature is also directed (*inter alia*) to:—

(*a*) Prevention of suffering to animals in various forms, encouragement of kindness to animals and inculcation of a love of animals in the young.

(*b*) Examination and criticism of the annual returns of the Home Secretary of licences granted under the Cruelty to Animals Act, 1876.

(*c*) Opposition to the immunisation (by inoculation) of the members of the armed forces against typhoid.

(*d*) Opposition to the immunisation of the civil population against diphtheria.

7. (*a*) Evidence was given on behalf of the Society by Dr. R. Fielding-Ould, M.D., M.R.C.P., M.A., to the following effect:—

He was the present director and treasurer of the Society and had held these positions for the past three years. He was also the editor of "The Animals' Defender". The Society's head office was at 92 Victoria Street, Westmister, S.W.1., where (in addition to himself) there were two secretaries, and the executive committee met once a month. The Society had branches throughout the country. The Society officially published the literature specified in part I of the said schedule, and other similar literature. In addition, both the head office and the branches organised meetings in London and the country, at schools and elsewhere. Before the war the Society also toured the country with caravans.

The head office was in constant communication with:—

(1) the branches,

(2) similar societies in Canada, America and South Africa, and

(3) other persons.

One of the Society's activities was to keep watch that the law relating to experiments on animals was properly administered. The head office from time to time received communications from the branches, or the public in various parts of the country, in connection with facts which were suggested to show that experiments on animals had taken place involving great pain and not in accordance with the law. When the Society got these reports it examined and considered them; and where it thought it was justified in so doing, it communicated with the Home Office. Similarly, all the medical journals which set out and dealt with experiments on animals were read, and if there was detected in these anything which the Society thought indicated that the law was not being administered or that cruelty was occurring, again the Society communicated with the proper authorities.

The Society also subscribed to and supported animal welfare funds and worked in close co-operation with the Royal Society for the Prevention of Cruelty to Animals.

The Society also had a subsidiary association called "The Faithful Friends "Guild". This association "was founded to afford an opportunity to those "who love their animal pets to do something practical for the rescue of all lost "or stolen dogs, cats, etc., also poor creatures used in the course of cruel "scientific experiments (vivisection)".

The Society had also established a "Dog Licence Fund" to help owners of dogs who could not otherwise afford to pay their dog tax, where there was a risk of the dog falling into the hands of vivisectors.

(*b*) So far the witness's evidence was not challenged and we accepted it. He gave further evidence, however, to the following effect:—

The Society was not primarily immersed in vivisection, and had no political activities. It was not concerned to alter the law by direct action but merely hoped to educate public opinion so that cruelty might be mitigated. Although, admittedly, the object of the Society in 1897 was to call upon Parliament totally to suppress the practice of vivisection, that object has since been

changed. The Society no longer aimed at legislation prohibiting vivisection. It now took the "*via media*" between the view, on the one hand, that vivisection of every sort or kind ought to be abolished, and the view, on the other hand, that there ought to be no kind of restriction on vivisection. The Society realised the necessity and justification of medical research, and had no wish to interfere with it. There were a large number of experiments on living animals to which the Society took no exception. It only objected to those which were calculated to give pain, and even in the case of such experiments the Society's view was that what had to be measured was the degree and extent of the pain, on the one hand, and the value of the new knowledge or discovery made, on the other hand. If the knowledge gained was of sufficient value to outweigh the pain and suffering, the Society took no exception.

This further evidence of the witness was challenged in cross-examination. He admitted that there had been no resolution of the Society altering its objects as set out in the said resolutions of 21st July, 1897 and 9th February, 1898. Nor was he able to point to any resolution or minute of the Society or its council or executive committee, or to any publications of the Society of any kind, as evidencing the view of its objects now put forward by him. We regarded this further evidence of the witness as irreconcilable with the documentary evidence before us and indeed with articles and speeches of the witness himself as appearing in "The Animals' Defender" (of which he is the editor) and we were unable to accept it.

8. Evidence (which we accepted in its entirety) was given on behalf of the Appellants as set out in the following nine paragraphs, by the respective witnesses therein named. This evidence related entirely to discoveries which had been made as a result of experiments on animals, since the year 1912, that is to say, since the report of the second Royal Commission.

9. Major-General Leopold Thomas Poole, D.S.O., M.C., Director of Pathology at the War Office (previously Assistant Professor of Pathology at the Army Medical College) and Honorary Physician to His Majesty the King, gave evidence to the following effect:—

(*a*) His duties as Director of Pathology at the War Office were concerned with immunology, that is to say, increasing the resistance of the troops to disease by the use of vaccines and other immunological agents and also with the valuation of biological and chemotherapeutical agents to cure them when they were ill. Examples of a biological agent were the typhoid vaccines or the anti-tetanus serum. Examples of a chemotherapeutic agent were the sulphonamides.

He dealt with human beings, not in the single patients, but in the mass. For that reason Army medical work was different from private practice, in that if an ordinary doctor made a mistake it affected one patient, whereas if he made a mistake it affected a large number, and in that respect his responsibilities were much greater. In order to safeguard himself he had to be absolutely certain of his facts and he made sure of them by animal experimentation in the initial stages. After a substance had been tested on animals it was tried on a limited number of humans and finally field trials were carried out, viz., trials on a large section of men before the product was issued.

The diseases with which he was mostly concerned were infectious diseases caused by the protozoa and single celled forms of life and the toxins or poisons they produced.

There were two forms of immunity from disease, (1) natural immunity handed down from parents, and (2) acquired immunity effected by an attack

of the disease itself or by sub-lethal doses of the infection or by artificial immunisation, i.e., such things as typhoid vaccine and tetanus toxoid.

To produce immunity the organism or virus which was the cause of the disease was used, either killed or in an attenuated live form; or the toxin in a modified form to effect immunity. These injected into a man brought about immunity without causing the actual disease.

In order to test the immunising product it was inoculated into an animal. After a series of inoculations the animal's resistance to the disease was tested by injecting the causative agent. The test involved infecting animals with the disease in order to evaluate the immunising properties of the substances under trial.

By way of illustration, the witness produced a reprint of an article by Col. J. S. K. Boyd, Deputy Director of Pathology, Middle East Forces, published in the British Medical Journal of 12th June, 1943, entitled "Enteric Group Fevers in Prisoners of War from the Western Desert" (document number 43), referring in particular to the section on pages 4–5 headed "Enteric Group Fevers among British Prisoners in Enemy Hands" and explaining the chart appearing at page 5 (a comparison of British and Italian T.A.B. vaccine). The animals used for the purpose of that experiment were mice, and the experiment showed two things, viz., (1) that it was possible to immunise animals by means of a vaccine, and (2) how the efficacy of the different types of vaccines could be assayed.

(*b*) The witness next dealt with the subject of pain caused to animals by experiments. It was inevitable, he said, that they must suffer some pain, but all their experiments were very carefully conducted and it was important from the investigational point of view that the animals should suffer the minimum of pain. In his opinion the pain which an animal suffered was different from that which a man suffered. It was pure physical pain. If the animals were treated properly and not frightened they did not suffer any mental pain. A certain portion of the experiments involved no pain. In addition to the tests there was the preparation of anti-serum. There was practically no pain attached to that; just the prick of a needle. In the case of animals used for experimental purposes it was fundamental to look after them to the very best of the ability of those dealing with them; essential to keep them in the very best condition; house them in the very best quarters in an even temperature; give them the very best of bedding and a well balanced diet. Before an animal could be utilised for an experiment it must be of a required weight. A variety of animals was used—rats, mice, guinea pigs, rabbits, etc. and, when obtainable, monkeys. For the bulk of the experiments, however, the animals used were rabbits, mice and guinea pigs. Before a pathologist experimented on living animals he had to be in possession of a licence and the necessary certificates. There was no exemption for the Army in these respects. Careful records had to be kept of every experiment of every kind, whether it was a feeding experiment or any other sort.

(*c*) In order to prevent the spread of communal disease in the Army it was necessary to protect 100 per cent. of the troops from those diseases which responded to inoculation or other methods of immunisation.

The witness then proceeded to deal with the following specific diseases and affections:—

(*d*) *Malaria.* This was the most important of the tropical diseases. It killed or incapacitated millions of human beings every year. Its effect on the economic conditions of the country might be devastating. Its effect might be equally dangerous to an army. It might even decide the issue of a campaign.

The witness produced and explained charts showing the incidence of malaria in North Africa in the year 1943 and West Africa in the year 1942 (documents numbers 44 and 45). These shewed that the incidence in North Africa, which was an endemic country, rose to 225 per 1,000 in the malaria season. In Italy, with General Montgomery's army, the incidence was even higher. In West Africa, which was a hyperendemic area, the rate rose to 1,400 per 1,000. West Africa was not a theatre of active operations, so that it was possible to take many sanitary precautions which were not possible in a theatre of operations. The witness also produced a memorandum from General Wavell to his General Officers Commanding in Chief of 9th December, 1942 (document 46) on the essential importance of precautions against this disease by way of anti-malarial measures. Although these sorts of precautions were in operation in West Africa, the rate there rose to 1,400 per 1,000.

The countries which the Japanese held were all countries in which malaria was hyperendemic, and unless they experimented with drugs to cure malaria these diseases might affect the whole campaign against the Japanese. Quinine was no longer available to meet the danger of malaria, for the reason that the Japanese held the main sources of supply. In place of it they were using at present mepacrine, but were also carrying out experiments with other drugs in the hope of getting something better. Mepacrine was a synonym for atebrine. The value of these drugs in the treatment of malaria was discovered through animal experimentation. After manufacture the drugs had to be tested on animals before they could be released for human use, in order to ascertain the degree of toxicity. It would be very dangerous to use them on human beings without previous experiments on animals. Also, the standard of purity of certain drugs, including mepacrine, could not be tested chemically but could only be tested by experiments on animals. If animals could not be used to test mepacrine it would not be possible to go on using that drug and the effect on the Army as a whole in relation to the Japanese campaigns would be very serious.

In addition to these there were other drugs for human protection—larvicides and mosquito repellants. In the case of repellants they could not be used on men until they had been tested on animals.

(*e*) *Typhoid* (including the enteric group of fevers). The witness produced a copy of a leading article from the " Times " of 17th June, 1943 (document number 47) on the subject of protective inoculation against typhoid fevers; showing the success achieved in this respect in the British Army as the result of the use of the " T.A.B." vaccine, and from his own knowledge he confirmed the accuracy of the results as stated.

The witness also gave comparative figures as follows:—

In the South African war there were 57,684 cases of typhoid and 8,000 deaths. In the war of 1914–1918 there were 20,139 cases and 1,191 deaths. In the present war the total number of cases so far reported was 778 and 58 deaths. There were several factors contributing to this remarkable diminution of cases, such as increase in knowledge of general measures of sanitation and increased evidence from the field of the value of the vaccine which gave individual protection. In actual fighting, however, sanitation was non-existent, leaving only the vaccine to be relied on. He gave illustrations showing the superiority of the British over the Italian vaccine. The vaccine was discovered in part by animal tests, and before any batch of vaccine could be issued to the troops it must first be tested by animal experiment.

(*f*) *Blood transfusion*. Early transfusion on the battlefield was by far the most important advance of this war in the treatment of the wounded soldier. On the battlefield it was not always possible to use whole blood.

What had to be used was plasma, which was first proved of value after experiments on animals, and but for these experiments this treatment would never have been discovered and a good many soldiers who were now alive would have been dead.

(g) *Wound infections.* Practically every wound got infected with bacteria and it was essential to guard against this. For this purpose he was then engaged on an investigation to determine the value of penicillin, which had only recently been discovered, but which had already saved soldiers' lives. Before it could be applied, however, it was essential to test it by experiments on animals. Without such experiments he dare not use it.

(h) *Burns.* These were very prevalent in the present war. By means of recent experiments on animals it had been discovered that the former treatment of burns was not only ineffective but also harmful, and an entirely new and effective treatment had been discovered.

(i) *Gas gangrene.* It was found necessary to take steps to try and reduce the mortality of this disease, and experiments on animals had shown:—

(1) that the hitherto existing treatment was ineffective; and

(2) that there were reasonable hopes of immunising soldiers against the disease.

(j) *Tetanus.* In the American civil war and the Franco-German war 1870–1 the mortality from tetanus was roughly 90 per cent. In the early part of the last war there was a considerable amount, the incidence being roughly about 8 per thousand.

The witness produced and explained a chart (document number 48) illustrating the fall in tetanus incidence as supply of antitoxic serum increased, 1914. This was an example of "passive immunity" or the employment of a serum which was prepared in the horse to neutralise the toxaemia or the toxic effect of the disease in the human. The mortality rate, however, in 1914 and 1915 was 63·5 per cent. During 1916 to 1919 it was 43·2 per cent. That rate was far too high, so the Army set about studying the question of active immunisation, that is to say, the immunisation of the soldier with the actual toxin or a modified form thereof, known as a toxoid. All our soldiers were immunised before they went into battle, with the result that tetanus had practically been eliminated.

This result was arrived at by means of animal experiments and could not have been achieved without the same. The toxoids were tested in animals, which were subsequently proved to have been protected against the artificially induced disease.

(k) *Yellow Fever.* The witness explained that this was an important disease conveyed by a certain type of mosquito which could spread the disease over a large area. Work on preventive inoculation had been vigorously pursued and by animal experiments, a vaccine had been prepared, the efficacy of which was tested on mice. Also, if yellow fever was suspected in a given area there was an important test on mice (which the witness explained) whereby it could be determined whether the disease was prevalent in that area.

(l) *Smallpox.* This disease was far more prevalent in the Near East and Far East than in this country. The witness spoke of the efficiency of vaccination as a means of immunisation against the disease.

(m) *Typhus.* This was a disease associated with poverty, starvation and wretchedness. There was already evidence that after the war the Continent was likely to be a fertile breeding ground for it. He gave figures showing the increase of the disease in Egypt and Cairo, ranging from 4,000 in 1939

to nearly 40,000 in 1943. A vaccine had been found for this disease which was giving extraordinarily good results.

(*n*) *General.* With regard to vaccines in general, all vaccines had to be tested by experiments against animals before they were issued. The stopping of these experiments on animals would mean the stoppage of the use of vaccines.

As regards the experiments on animals generally, in the witness' opinion no ordinance could ever suppress experimental pathology, because experimental pathology alone could supply the knowledge which was required. That knowledge in the initial stages in the majority of cases must be obtained from animal experimentation, without which they would be completely in the dark about curative agents.

The witness agreed with the following views put up to him in cross-examination, viz.,

(1) that it was desirable in every possible way to prevent animals from suffering pain whatever experiments were being conducted and whatever the animal was,

(2) that it was desirable that there should be the safeguards contained in the Prevention of Cruelty to Animals Act, 1876,

(3) that England was ahead of other countries in this respect, and

(4) that in determining whether to make an experiment, and the nature of the experiment proposed to be made, there must be measured, on the one side, the extent of the pain given to the animal, and, on the other side, the value of the knowledge expected to be acquired as the result of the experiment.

The witness pointed out however, that in the case of an experiment which would otherwise cause severe pain, such as the burning of a guinea pig, the animal would be anaesthetised, and killed before it recovered consciousness, and would therefore suffer no pain at all.

10. Sir Edward Mellanby, K.C.B., F.R.S., F.R.C.P., a former Honorary Physician to His Majesty the King, gave evidence as follows:—

He had published books and papers on nutrition and disease, and had spent many years in the study of rickets and similar diseases. For centuries rickets had been the commonest cause of deformity and stunted growth in the country. At the request of the Medical Research Council experimental work on animals was done during the last war to see if the cause could be discovered. He was concerned with those experiments. Their results were to show that there was a factor of diet which had previously not been thought of, now known as vitamin D, the deficiency of which caused rickets. The result on children of these discoveries was that the disease had been practically eliminated from this country. It would have been quite impossible to discover the vitamin D question except by animal experiments. The discoveries also involved the bringing up of a new generation with much better teeth. Animal experiments also revealed that certain foods commonly used for children actually produced the disease rather than gave protection against it. Illustrations were some of the cereal compounds such as oatmeal and maize, which were supposed to be very good for producing good bones because they had lots of calcium and phosphorous in them. Animal experiments ultimately showed, however, that these compounds were harmful in that respect.

The feeding experiments caused no pain to the animals. Nevertheless in order to carry them out it was necessary to have a licence and a certificate from the Home Office, and he was required to keep, and kept, a record of every experiment.

11. Dr. Robert Daniel Lawrence, F.R.C.P., an Aberdeen University (Honours) Gold Medallist in the subjects of anatomy, surgery and medicine, physician in charge of the diabetic clinic at King's College Hospital, gave evidence as follows:—

For 21 years he had specialised in diabetes, and had written a book called "The Diabetic Life", which, in 1940, was in its twelfth edition and had been translated into foreign languages. The fact that the removal of the pancreas in dogs produced diabetes in those dogs was discovered in 1889. From 1912 to 1914 there was a big advance in diet treatment, worked out as a result of experiments on dogs, which reduced the mortality a great deal. But the real fundamental advance in the treatment of the disease began in 1922 as the result of the discovery by Sir Frederick Banting and Dr. Best of the insulin treatment. This discovery came about from experiments on animals, chiefly dogs.

Prior to 1922 the chances of life of a child up to 14 years of age suffering from diabetes were occasionally a week, and at most, as a rule, two or six months. The position now was that if such children had co-operative parents who would carry out the treatment by diet and insulin, which was the only way of keeping them alive, they grew up as normal individuals, went to school and became useful citizens somewhere between 15 and 20, like anybody else.

The effect of the treatment upon adult persons suffering from the disease was similar in the severe cases in which insulin was used; in other words the child's state could be extended to the diabetic state as it existed to the age of 40. After that there was a mild type of diabetes which was more common: but insulin acted just the same.

It was true that it had been suggested that more people died of diabetes to-day than before, but the chief reason was that diabetes was now more often discovered and diagnosed than it used to be. In other words, there was a new category in which deaths appeared in the annual returns.

The experiments on dogs which led to the discovery of insulin did not appear to cause pain to the dogs.

The strength of inoculations could not be tested by ordinary chemical methods. It could only be tested by injecting the insulin into animals, mice and rabbits, to observe the effect which it had on their blood sugar. Batches of these animals were put through this process whenever manufacturers needed a new supply of insulin to sell. The drug was a dangerous one to use if its proportions were not known.

There were many treatments other than insulin for the less severe types of cases. But in the severe types (which were something under 50 per cent. of the total) if as a result of stopping the manfacture and testing of insulin there were no insulin available, the patient might well die within four days.

12. Dr. John William Trevan, F.R.C.P., gave evidence as follows:—

He qualified in 1911, was a demonstrator of physiology at St. Bartholomew's Hospital, had been head of the pharmacological department of the Wellcome Physiological Research Laboratories since 1920, and director of those laboratories since 1941.

At these laboratories there were carried out about 250,000 experiments on animals annually. Of these about 80 per cent. were simple injections. In the past year there were 277,565 experiments in all, of which all but 425 were simple injections, the majority being either subcutaneous or intracutaneous, that is into the substance of the skin. Of the total number 1,760 were performed on dogs for the work done in connection with the treatment of dog diseases. The remainder were principally on mice, but also on guinea pigs, rats and rabbits.

The laboratories provided and tested sera and material for immunisation of the Army, the R.A.F. and also a small amount for the Navy. They also prepared nearly all the material used for the immunisation of children against diphtheria under the Ministry of Health scheme.

The witness dealt with various diseases, namely Addison's disease, beri-beri, pelagra, and scurvy, and (in relation thereto) vitamins B1, B2, C and D1. He explained how discoveries had been found for the prevention or cure of these diseases, by means of experiments on dogs, cats, rabbits, rats, pigeons and guinea pigs.

He also dealt with the subject of immunisation against diseases due to bacteria, and in particular diphtheria. His laboratories had made three million doses of diphtheria inoculation for the Ministry of Health in the last year and about two million doses in the present year. The diphtheria serum was discovered by a German investigator experimenting on the injection of diphtheria bacilli into guinea pigs, and from his original experiment other experiments had gradually developed until this day.

The witness also dealt with certain diseases of animals, namely dysentery of horses and lambs, an anti-toxin against which had been discovered by experiments on mice and rabbits .

He dealt with certain drugs, namely the sulphonamides, M. & B. 693 and M. & B. 760, which were discovered as a result of experiments on animals and which had to be similarly tested on animals to ensure the standardisation of the drug.

The whole of the 277,565 experiments carried out in the year were reported to the Home Office for the reason that, although there were grounds for thinking that in the great majority of cases the animal suffered no pain, it was not always possible to be certain that some pain might not be involved. In some cases pain was inevitable. The effect of stopping experiments on animals would be to stop medical progress.

13. Sir John Charles George Ledingham, C.M.G., F.R.S., a Gold Medallist and Anderson Scholar, gave the following evidence:—

In the last war he was a Lieut-Colonel in the R.A.M.C., served on the medical advisory committee for the Mediterranean, and was consulting bacteriologist for Mesopotamia. Up to a few months ago he was a director of the Lister Institute, which was one of the bigger research institutes in the country. He himself held a licence for experimenting on animals and overlooked all the experiments conducted at the Institute.

In his view the results achieved in medicine by way of the prevention and cure of disease could not have been achieved without the advantage of animal experiments. The progress of the last 30 years had been more than before. The longer animal experiments continued the more complete would become the knowledge created by them.

14. Sir William Savage, M.R.C.S., L.R.C.P., gave evidence that from 1903 up to quite recently he had held public health appointments including General Medical Officer of Health for Somerset for 28 years, and was president of the Society of Medical Officers of Health. He had written about eight books on public health matters.

The witness explained that public health was not a science of its own, a pure science; it was founded upon the finding of other sciences, things like mathematics, geology, chemistry and physics, but, above all, it was founded upon the two sciences of bacteriology and physiology; therefore any advance in those sciences, however brought about, by animal experiments or otherwise, reflected very closely on the work of public health and its

administration. It was the duty of public health administrators to keep themselves very much alive to all those developments, however produced, including animal experiments, and to apply them to improve the health of the people as public health. Therefore the enormous advances which have been made, for instance, in bacteriology, which had been spoken of by previous witnesses, were all very largely connected with experiments on animals and were all reflected in the practice of public health.

By way of illustration the witness dealt with diphtheria, pointing out that prior to 1894 diphtheria had a mortality of 30 per cent. In 1894, entirely due to animal experiments, anti-toxin as a form of treatment of diphtheria was introduced. Directly that was introduced the mortality fell rapidly. From 1895 to 1899 it had fallen to 17 per cent. In 1927 it had fallen to 7 per cent.

But apart from the reduction of the rate of mortality, the prevalence of the disease had not gone down in spite of improvements in sanitation until the introduction of diphtheria immunisation. There had not been much immunisation in this country prior to 1940, but there was strong evidence from places such as Toronto and New York of the value of immunisation, and this was now being widely used in this country. In his own county of Somerset, up to May, 1943, about 28,000 school children and about 17,300 pre-school children had been immunised. In order to get the benefit of immunisation it was necessary that at least 50 per cent. of the school children and 50 per cent. of the pre-school children should be immunised. This was an example of the application of animal experiments.

By way of further illustration, the witness explained that in cattle a disease of the udder called mastitis was extremely common. Through the witness' own research, extending over a period of three years, and, in particular, by means of experiments which he made on goats, he discovered that certain very extensive outbreaks of sore throats amongst men were due to a particular form of mastitis in cattle, namely one where a human strain from a milker (such as sores on the hands) got implanted in the cow and set up mastitis. This was a very important piece of research because it revealed what types of mastitis were infectious to man, and also showed the desirability of requiring the notification of all milkers with sores on their hands. These results could not have been obtained except by these animal experiments. He had to inoculate the teats of the goats with different types to work out the problem.

15. Professor Joshua Harold Burn, M.A., M.D., Fellow of Balliol, Professor of Pharmacology at the University of Oxford since 1937 and one of the Crown nominees on the council of the General Medical Council, gave the following evidence.

He had written on various medical subjects such as biological assay and biological standardisation. He did not think it possible to distinguish between experiments on animals which caused pain and those which did not cause pain. The biological standardisation of remedies covered substances such as insulin, for the treatment of diabetes, and neoarsphenamine for the treatment of syphilis, and involved experiments in which the substances were injected into animals. The experimental procedure was nothing more than the making of an injection. The effect to be determined, or the end point to be arrived at, was the amount of the substance to be injected in order to produce a proved effect in a particular proportion of animals. For example neoarsphenamine was a toxic, i.e. poisonous, substance. It was used in a particular dose in the treatment of syphilis. It was important that each batch of neoarsphenamine which the manufacturer prepared should have the ordinary amount of toxicity and not an excessive amount. In order to exclude the possibility that a given

batch had an excessive toxicity it was tested on animals by injecting a given dose into a large number of the animals. Excessive toxicity was determined by the proportion of the animals in which toxic symptoms took place. A very large dose would induce death in every animal injected. A very small dose would produce symptoms in none of the animals injected. Between these two extremes what had to be determined was the dose with which only 50 per cent. of the animals developed symptoms terminating in death. It was quite impossible to know beforehand which of those animals was going to suffer pain and which was not. It was very difficult to say how much pain they would suffer, and there would be no possible means of administering an Act which said that painless experiments need not be reported to the Home Office, but those which caused pain must be reported. Therefore any Act of Parliament which attempted to lay down that there must be controlled experiments which caused pain, or that experiments which caused pain must not be allowed, would, in fact, prevent all experiments on animals. For example, feeding experiments, when the deficiency in diet was a deficiency of vitamin D1, caused convulsions in pigeons. He would not say that pigeons which had these convulsions suffered very much pain, but it would be impossible for anyone to say that they suffered none.

The witness agreed with the evidence of Dr. Lawrence as to the value of insulin.

He also explained that a portion (known as the posterior lobe) of the pituitary gland, which is a gland in the head of an animal, contained an active principle which produced important effects if extracted from the gland and injected into a human subject. The chief use of the injection of this extract was to assist women in child-birth. The extract was taken from animals immediately they were dead, but before the extract could be injected into a human subject it was essential that its potency should first be tested by injecting it into living animals. Before the passing of the Therapeutic Substances Act, 1925, there were cases of disasters arising from excessive use of the extract. The correct strength of the dose could only be tested by experiments on animals.

The witness also dealt with salvarsan. This was a cure for syphilis and also for tropical fevers such as yaws and relapsing fevers. Since its introduction the substance has been improved, and the more important measure in which the substance had been improved was in the means of controlling its therapeutic potency. This improvement was due entirely to animal experiments. The use of the substance as a cure for venereal disease was a matter of the greatest importance. The purpose of animal experiments was the alleviation of pain and suffering in human beings and animals.

16. Professor George Henry Wooldridge gave evidence as follows:—

He was a Fellow of the Royal College of Veterinary Surgeons, a past president and the Steele Memorial Medallist of that college, Emeritus Professor of Veterinary Medicine, and had just retired from the vice-principalship of the Royal Veterinary College.

He himself had never held a licence or done experiments on animals, but he had observed quite a large number. There was a committee which advised the Home Office on the administration of the Cruelty to Animals Act, 1876, and the Home Office had from time to time referred to him for his opinion as to the fitness of applicants for licences under the Act to hold such licences and perform experiments. He had also watched experiments on behalf of the advisory committee and had been instructed by the Home Office to supervise surgical operations on animals by human surgeons, to see that nothing was done which would cause any unnecessary pain or suffering. The purpose of such operations was that they should later be applied to human surgery.

In his treatment of animals he always took advantage of clinical results which had been obtained as a result of experiments on animals. In his view the result of experiments on animals had been to decrease very considerably suffering among animals.

Local anaesthetics were discovered by animal experiments, and by means of such experiments it was now possible to carry out operations on human beings with local anaesthetics. Further, by reason of animal experiments it became possible to use local anaesthetics on dogs, and other animals. He himself had performed thousands of operations on animals under local anaesthetics. There were over 2,000 practising veterinary surgeons in this country all of whom used local anaesthetics, and the sum total of the saving in pain in animals by the use of local anaesthetics must be enormous.

The witness dealt with the following diseases which affected animals, viz., redwater (cattle), malignant jaundice (dogs), milk fever (cows), blackleg or blackquarter (horned stock and sheep), dysentery (lambs), braxy (sheep), rinderpest (cattle), erysipelas (swine), glanders (horses) and rabies (dogs). He explained how, largely as a result of experiments on animals, it had become possible to prevent or cure these diseases, and greatly reduce the mortality therefrom. As regards animal diseases in general, there were a very large number of sera and vaccines used in this country for animals. They ran into millions of doses a year used for preventive purposes.

The witness also spoke of a test in which mice were used for the diagnosis of pregnancy in mares and cattle. The test is used extensively and among others one of its important objects is the avoidance of the results of miscarriage in pregnant bloodstock and cattle about to be transported by rail or sea.

17. Sir Leonard Rogers, K.C.S.I., C.I.E., LL.D., M.D., F.R.C.P., F.R.C.S., F.R.S., retired Major-General of the Indian Medical Service, gave the following evidence:—

He was the author of the book " The Truth about Vivisection " (document number 49), and produced the same. He also produced a reprint (document number 50) of an article written by him in the British Medical Journal of 18th March, 1939, on " Prophylactic Inoculations against Animal " Diseases in the British Empire."

The second half of the book " The Truth about Vivisection " referred (*inter alia*) to discoveries and tests in which animals had been used since 1912 and up to 1936. The said article also summarised discoveries up to the date of its publication since 1912 and gave a great deal of additional information as regards over 51 million cattle and sheep inoculated in 8 years in India and Africa alone.

18. It was contended on behalf of the Society that:—

(*a*) On a true view of the evidence, both oral and documentary, the object of the Society was to prevent cruelty to animals, and, in particular, in the area where scientific experiments were effected on living animals. Admittedly, if the only way to prevent that cruelty was to abolish vivisection altogether by way of legislation, the Society would be aiming at that end; but it was not its main object.

(*b*) Upon authority, the prevention of cruelty to animals (in any sphere) was a charitable purpose, on the footing that the prevention or suppression of cruelty and the encouragement of kindness to animals were conducive to the improvement of morality amongst men, and were therefore for the benefit of the public.

(*c*) It was irrelevant for the Commissioners to consider whether in their view the abolition of vivisection would, or would not, be for the public benefit. Nor was it for them to attempt to balance any supposed detriment to the public against the benefit to the public by way of improvement of morality.

(*d*) The objects of the Society were in all material respects the same as those which were before the Court in In re *Foveaux, Cross* v. *London Anti-Vivisection Society,* [1895] 2 Ch. 501. The decision in that case had never been over-ruled, and was expressly approved by the Court of Appeal in In re *Wedgwood, Allen* v. *Wedgwood,* [1915] 1 Ch. 113, and was conclusive of the present case.

(*e*) The Society, therefore, was a body of persons established for charitable purposes only, its income was applied exclusively to those purposes, and accordingly its claim for exemption from Income Tax was well-founded and should be allowed.

The following further authorities were referred to:—

*Armstrong* v. *Reeves* (1890), 25 L.R.Ir. 325.

In re *Douglas, Obert* v. *Barrow,* 35 Ch.D. 472.

In re *Grove-Grady, Plowden* v. *Lawrence,* [1929] 1 Ch. 557.

*Special Commissioners of Income Tax* v. *Pemsel,* [1891] A.C.531 (3 T.C. 53.)

*Commissioners of Inland Revenue* v. *Temperance Council of the Christian Churches of England and Wales,* 42 T.L.R. 618, (10 T.C. 748.)

*Commissioners of Inland Revenue* v. *Falkirk Temperance Cafe Trust,* 1927 S.C.261 (11 T.C. 353.)

*Commissioners of Inland Revenue* v. *Yorkshire Agricultural Society,* [1928] 1 K.B. 611 (13 T.C. 58.)

19. It was contended on behalf of the Appellants that:—

(*a*) The objects of the Society were to be determined by reference to the terms of the said resolutions of 21st July, 1897, and 9th February, 1898, and to the other documentary evidence as appearing in its official literature. The view of the Society's objects indicated by Dr. R. Fielding-Ould in paragraph 7(*b*) above was wholly irreconcilable with the said resolutions and literature, was unsupported by any of the Society's publications and should not be accepted.

(*b*) Upon a true view of the evidence, the main object of the Society was to secure the total abolition by law of all experiments upon living animals, whether calculated to inflict pain or not, and for that purpose to secure the repeal of the Cruelty to Animals Act, 1876, and the Therapeutic Substances Act, 1925, and the substitution of a new enactment prohibiting such experiments altogether.

(*c*) This object was not a charitable purpose, on the grounds (*a*) that it was a "political" object, that is to say, one for the alteration of the law by means of legislation, and (*b*) that it was not an object beneficial to the community.

(*d*) The case of In re *Foveaux, Cross* v. *London Anti-Vivisection Society,* [1895] 2 Ch. 501, was not conclusive of the matter, for the reasons that (*a*) the objects of the present Society were not the same as those before the Court in In re *Foveaux,* (*b*) in that case the alteration of the law by legislation was regarded as something merely subsidiary or incidental to the prevention of cruelty to animals, whereas in the present case the alteration of the law by legislation was the main object, and (*c*) in that case the judgment of Chitty, J., proceeded on the footing that it was sufficient that the intention of the Society concerned was to benefit the community, and that it was not for the Court to determine whether the purpose was for the public benefit. But in the later case of In re *Hummeltenberg, Beatty* v. *London Spiritualistic Alliance, Ltd.,* [1923] 1 Ch. 237, Russell, J., disagreed with this part of the reasoning of Chitty, J., and held that (1) in order to establish a charitable

purpose it was necessary to show that the purpose was or might be operative for the public benefit and (2) that the question whether the purpose was or might be operative for the public benefit was one to be answered by the Court by forming an opinion upon the evidence before it—a view which was adopted by the Court of Appeal in the subsequent case of In re *Grove-Grady, Plowden* v. *Lawrence,* [1929] 1 Ch. 557.

(*e*) It was for the Commissioners, therefore, to find on the evidence before them whether the objects of the Society were or might be operative for the public benefit.

(*f*) Upon the evidence, even after taking into account any public benefit (if any) by way of improvement of morals, the objects and activities of the Society were not for the public benefit, but, on the contrary, were, in peace, a menace to the human race and animals, and, in war, a disaster.

(*g*) The Society, therefore, was not a body of persons established for charitable purposes only, its income was not applicable to charitable purposes only, and accordingly its claim to exemption from Income Tax should be dismissed.

The following further authorities were referred to:—

*Special Commissioners of Income Tax* v. *Pemsel,* [1891] A.C. 531 (3 T.C. 53.)

*Commissioners of Inland Revenue* v. *Temperance Council of the Christian Churches of England and Wales,* 42 T.L.R. 618 (10 T.C. 748.)

*Trustees for the Roll of Voluntary Workers* v. *Commissioners of Inland Revenue,* 1942 S.C.47 (24 T.C. 320.)

20. We, the Commissioners who heard the appeal, gave our decision in writing on 29th December, 1943, in the following terms:—

In this case the Society claims exemption from Income Tax under Section 37 of the Income Tax Act, 1918, on the ground that it is a body of persons established for charitable purposes only.

The object of the Society, as set out in its book of rules, is stated to be: " To awaken the conscience of mankind to the iniquity of torturing animals " for any purpose whatever; to draw public attention to the impossibility of " any adequate protection from torture being afforded to animals under the " present law; and so to lead the people of this country to call upon " Parliament totally to suppress the practice of Vivisection."

An explanatory resolution was passed by the council of the Society on 9th February, 1898, in the following terms:—

" The Council affirm that, while the demand for the total abolition of " vivisection will ever remain the object of the National Anti-Vivisection " Society, the Society is not thereby precluded from making efforts in " Parliament for Lesser Measures, having for their object the saving of " animals from scientific torture."

The quotations set out above are taken from the book of rules of the Society as reprinted in 1938.

We are satisfied that the main object of the Society is the total abolition of vivisection, including in that term all experiments on living animals whether calculated to inflict pain or not, and (for that purpose) the repeal of the Cruelty to Animals Act, 1876, and the substitution of a new enactment prohibiting vivisection altogether.

Dr. Fielding-Ould in his evidence before us suggested that there were some experiments on living animals to which the Society did not object and that the Society was only opposed to such experiments as caused pain and suffering

to the animals, but we find it difficult to reconcile this evidence with the statements contained in the literature produced by the Society, or indeed with the speeches of Dr. Fielding-Ould, as reported in "The Animals' Defender", a paper of which he is the editor.

We are satisfied that the members of the Society are actuated by an intense love of animals, and that the work of the Society is to a large extent directed towards the prevention of cruelty to animals. Part of its propaganda literature is directed towards inculcating a love of animals in the young.

A number of very distinguished men were called as witnesses by the Crown with the object of proving the great benefits which had accrued to the public by reason of the medical and scientific knowledge which had been obtained through experiments on living animals.

We think that it has been proved conclusively that:—

(*a*) a large amount of present day medical and scientific knowledge is due to experiments on living animals;

(*b*) many valuable cures for and preventatives of disease have been discovered and perfected by means of experiments on living animals, and much suffering both to human beings and to animals has been either prevented or alleviated thereby.

We are satisfied that if experiments on living animals were to be forbidden (i.e., if vivisection were abolished) a very serious obstacle would be placed in the way of obtaining further medical and scientific knowledge calculated to be of benefit to the public.

We were very impressed by the evidence of Major-General Poole, Director of Pathology at the War Office, as to the great value of experiments on living animals in connection with the successful carrying on of the present war by the maintenance of the health of the troops and the avoidance or minimising of many diseases to which soldiers in the field are particularly liable.

There was no express evidence before us that any public benefit in the direction of the advancement of morals and education amongst men (or in any other direction) would or might result from the Society's efforts to abolish vivisection, but if it must be assumed that some such benefit would or might so result, and if we conceived it to be our function to determine the case on the footing of weighing against that assumed benefit the evidence given before us, and of forming a conclusion whether, on balance, the object of the Society was for the public benefit, we should hold, on that evidence, that any assumed public benefit in the direction of the advancement of morals and education was far outweighed by the detriment to medical science and research and consequently to the public health which would result if the Society succeeded in achieving its object, and that, on balance, the object of the Society, so far from being for the public benefit, was gravely injurious thereto, with the result that the Society could not be regarded as a charity.

But, upon the authorities, we regard ourselves as precluded from so holding.

In 1895 the Society was held to be a charity within the legal definition of the word "charity" (see In re *Foveaux,* [1895] 2 Ch. 501). Certain passages in the judgment of Chitty, J., have been commented upon in In re *Hummeltenberg,* [1923] 1 Ch. 237, and in the case of In re *Grove-Grady,* [1929] 1 Ch. 557, at page 582, Russell, L.J., stated as follows: "For instance "Anti-vivisection Societies, which were held to be charities by Chitty, J., in "In re *Foveaux,* and were described by him as near the border line, might "possibly in the light of later knowledge in regard to the benefits accruing to "mankind from vivisection be held not to be charities."

In re *Foveaux* has not been overruled and it was certainly approved by the Court of Appeal in In re *Wedgwood,* [1915] 1 Ch. 113 (see especially the judgment of Swinfen Eady, L.J., at page 122).

In these circumstances we have come to the conclusion that so far as we are concerned we are bound by the authorities to hold that the Society is a body of persons established for charitable purposes only and entitled to exemption from Income Tax under Section 37 of the Income Tax Act, 1918.

It remains for us to deal with the Crown's argument that as the alteration of the law by means of legislation was a main purpose of the Society its claim to be a charity must fail.

In support of this argument the Crown relied upon the case of *Commissioners of Inland Revenue* v. *Temperance Council of the Christian Churches of England and Wales,* 10 T.C. 748. We agree that the alteration of the law by means of legislation is a main purpose of the Society, but the repeal of the Act of Parliament (i.e., 39 & 40 Vict., c. 77) was undoubtedly part of the Society's object in 1895 when In re *Foveaux* was decided and Chitty, J., refers to this in his judgment. It would seem to follow that Chitty, J., considered legislation only came in in a subsidiary way (see Rowlatt, J., 10 T.C., at page 753).

We therefore feel bound to reject this argument and allow the Society's claim.

21. The Appellants immediately after the determination of the said claim declared to us their dissatisfaction therewith as being erroneous in point of law and in due course required us to state a Case for the opinion of the High Court pursuant to the Finance Act, 1925, Section 19, and Income Tax Act, 1918, Section 149, which Case we have stated and do sign accordingly.

N. ANDERSON,<br>F. N. D. PRESTON, } Commissioners for the Special Purposes of the Income Tax Acts.

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

22nd August, 1944.

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The case came before Macnaghten, J., in the King's Bench Division on 20th and 23rd July, 1945, when judgment was reserved. On 27th July, 1945, judgment was given in favour of the Crown, with costs.

Mr. D. L. Jenkins, K.C., Mr. J. H. Stamp and Mr. Reginald P. Hills appeared as Counsel for the Crown, and Mr. Frederick Grant, K.C., Mr. Valentine Holmes, K.C., and Mr. R. W. Lomax for the Society.

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## JUDGMENT

**Macnaghten, J.**—It is provided by Sections 37 and 40(1) of the Income Tax Act, 1918, that exemption from the payment of Income Tax shall be granted " 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 " purposes only ", and that any claim for such exemption shall be made to the Special Commissioners, who on proof of the facts to their satisfaction shall allow the claim, and issue an order for repayment of the tax.

(1) Now Section 19, Finance Act, 1925.

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The Respondent to this appeal, the National Anti-Vivisection Society, during the year ended 5th April, 1943, received income from its investments amounting to £2,876 15*s*. 7*d*., and it claimed exemption from Income Tax in respect of that income on the ground that it was " a body of persons " established for charitable purposes only ". The Special Commissioners allowed the claim, and issued an order for repayment of the tax. The question at issue on this appeal is whether there was any evidence before the Special Commissioners on which they could find that the Society is established for charitable purposes only.

The Respondent is a voluntary society; it consists of a president, a vice-president, and members described as honorary members, life members and annual members. It is governed by a council which annually elects an executive committee, and the executive committee, subject to the supreme authority of the council, has the sole and entire management of the business of the Society and appoints its officials and servants. The chief official of the Society is its director.

The Society was originally formed in the year 1875. It was then called " The Society for the Protection of Animals liable to Vivisection." Later its name was changed to " The Victoria Street Society for the Protection of " Animals from Vivisection." In 1897 it adopted its present name, " The " National Anti-Vivisection Society."

Before the Special Commissioners the hearing occupied three days. On behalf of the Society Dr. R. Fielding-Ould, its director and treasurer, gave evidence. Part of his evidence was accepted by the Special Commissioners and part was rejected. On the other side the Commissioners of Inland Revenue called no less than nine gentlemen of great eminence in opposition to the claim of the Society, namely: Major-General L. T. Poole, Honorary Physician to His Majesty and Director of Pathology at the War Office; Sir Edward Mellanby, K.C.B., a Fellow of the Royal Society; Dr. Robert Daniel Lawrence, a Fellow of the Royal College of Physicians; Dr. John William Trevan, Director of the Wellcome Physiological Research Laboratories; Sir John Ledingham, a Fellow of the Royal Society; Sir William Savage, President of the Society of Medical Officers of Health; Dr. Joshua Burn, Professor of Pharmacology in the University of Oxford; Professor Wooldridge, a Fellow and a Past President of the Royal College of Veterinary Surgeons; Sir Leonard Rogers, K.C.S.I., retired Major-General of the Indian Medical Service.

The Special Commissioners accepted their evidence in its entirety and gave their decision in the following terms: " In this case the Society claims exemp- " tion from Income Tax under Section 37 of the Income Tax Act, 1918, " on the ground that it is a body of persons established for charitable " purposes only. The object of the Society, as set out in its book of rules, " is stated to be: 'To awaken the conscience of mankind to the iniquity of " ' torturing animals for any purpose whatever; to draw public attention to " ' the impossibility of any adequate protection from torture being afforded " ' to animals under the present law; and so to lead the people of this country " ' to call upon Parliament totally to suppress the practice of Vivisection.' " An explanatory resolution was passed by the council of the Society on " 9th February, 1898, in the following terms:—' The Council affirm that, " ' while the demand for the total abolition of vivisection will ever remain " ' the object of the National Anti-Vivisection Society, the Society is not " ' thereby precluded from making efforts in Parliament for Lesser Measures, " ' having for their object the saving of animals from scientific torture.'

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" The quotations set out above are taken from the book of rules of the
" Society as reprinted in 1938. We are satisfied that the main object of the
" Society is the total abolition of vivisection, including in that term all
" experiments on living animals whether calculated to inflict pain or not,
" and (for that purpose) the repeal of the Cruelty to Animals Act, 1876,
" and the substitution of a new enactment prohibiting vivisection altogether.
" Dr. Fielding-Ould in his evidence before us suggested that there were some
" experiments on living animals to which the Society did not object and
" that the Society was only opposed to such experiments as caused pain
" and suffering to the animals, but we find it difficult to reconcile this evidence
" with the statements contained in the literature produced by the Society,
" or indeed with the speeches of Dr. Fielding-Ould, as reported in ' The
" ' Animals' Defender ', a paper of which he is the editor. We are satisfied
" that the members of the Society are actuated by an intense love of animals,
" and that the work of the Society is to a large extent directed towards the
" prevention of cruelty to animals. Part of its propaganda literature is
" directed towards inculcating a love of animals in the young. A number
" of very distinguished men were called as witnesses by the Crown with
" the object of proving the great benefits which had accrued to the public
" by reason of the medical and scientific knowledge which had been obtained
" through experiments on living animals. We think it has been proved
" conclusively that:—(*a*) a large amount of present day medical and scientific
" knowledge is due to experiments on living animals; (*b*) many valuable
" cures for and preventatives of disease have been discovered and perfected
" by means of experiments on living animals, and much suffering both to
" human beings and to animals has been either prevented or alleviated
" thereby. We are satisfied that if experiments on living animals were
" to be forbidden (i.e., if vivisection were abolished) a very serious obstacle
" would be placed in the way of obtaining further medical and scientific
" knowledge calculated to be of benefit to the public. We were very
" impressed by the evidence of Major-General Poole, Director of Pathology
" at the War Office, as to the great value of experiments on living animals
" in connection with the successful carrying on of the present war by the
" maintenance of the health of the troops and of avoidance or minimising
" of many diseases to which soldiers in the field are particularly liable.
" There was no express evidence before us that any public benefit in the
" direction of the advancement of morals and education amongst men (or
" in any other direction) would or might result from the Society's efforts to
" abolish vivisection, but if it must be assumed that some such benefit would
" or might so result, and if we conceived it to be our function to determine
" the case on the footing of weighing against that assumed benefit the
" evidence given before us, and of forming a conclusion whether, on balance,
" the object of the Society was for the public benefit, we should hold, on
" that evidence, that any assumed public benefit in the direction of the
" advancement of morals and education was far outweighed by the detriment
" to medical science and research and consequently to the public health
" which would result if the Society succeeded in achieving its object, and
" that, on balance, the object of the Society, so far from being for the
" public benefit, was gravely injurious thereto, with the result that the Society
" could not be regarded as a charity."

Nevertheless, the Special Commissioners considered that they were bound to allow the Society's claim for exemption because, in the case of In re *Foveaux, Cross* v. *London Anti-Vivisection Society*, [1895] 2 Ch. 501, Chitty, J., decided that the Society, under its former name of the Victoria

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Street Society for the Protection of Animals from Vivisection, was a "charity" in the legal sense of that word, and his judgment in that case was referred to without dissent in the case of In re *Wedgwood, Allen* v. *Wedgwood,* [1915] 1 Ch. 113. In that case a testatrix by her will had given her residue upon trust to apply the same for the protection and benefit of animals. In their judgments in that case Lord Cozens-Hardy, M.R., and Swinfen Eady, L.J., referred to the case of In re *Foveaux*(1), and they referred to it in terms which seem to indicate that they approved the decision. But since then the decision of Chitty, J., has been subjected to criticism. In the case of In re *Hummeltenberg, Beatty* v. *London Spiritualistic Alliance, Ltd.,* [1923] 1 Ch. 237, the question arose as to whether a bequest to the treasurer for the time being of the London Spiritualistic Alliance, Ltd. of a sum of £3,000 to form the nucleus of a fund for the purpose of establishing a college for the training and developing of suitable persons as mediums was a good charitable gift. In that case the present Lord Russell of Killowen said, at page 242: "It was contended that the Court was not the tribunal "to determine whether a gift or trust was or was not a gift or a trust for "the benefit of the public. It was said that the only judge of this was "the donor of the gift or the creator of the trust. For this view reliance "was placed on the views expressed by the Master of the Rolls and by "some members of the Court of Appeal in Ireland in the case of In re "*Cranston* ([1898] 1 I.R. 431). Reliance was also placed on a sentence "in the judgment of Chitty, J., in In re *Foveaux*. So far as the views so "expressed declare that the personal or private opinion of the Judge is "immaterial, I agree; but so far as they lay down or suggest that the donor "of the gift or the creator of the trust is to determine whether the purpose "is beneficial to the public, I respectfully disagree. If a testator by stating "or indicating his view that a trust is beneficial to the public can establish "that fact beyond question, trusts might be established in perpetuity for "the promotion of all kinds of fantastic (though not unlawful) objects, of "which the training of poodles to dance might be a mild example." The matter was further dealt with in the case of In re *Grove-Grady, Plowden* v. *Lawrence,* [1929] 1 Ch. 557. That case came before the Court of Appeal, and at page 572 Lord Hanworth, M.R., said: "Who is to decide these "questions?"—namely, questions whether a gift was a charitable gift within the meaning of that word in law—"I agree with Holmes, L.J., that the "answer does not depend upon the view entertained by any individual— "'either by the Judge who is to decide the question, or by the person who "'makes the gift': In re *Cranston*(2). The test is to be applied from "evidence of the benefit to be derived by the public or a considerable "section of it; though a wide divergence of opinion may exist as to the "expediency, or utility, of what is accepted generally as beneficial. The "Court must decide whether benefit to the community is established. In "my judgment Russell, J., as he then was, correctly states the proposition: "'The question whether a gift is or may be operative for the public benefit "'is a question to be answered by the Court by forming an opinion upon "'the evidence before it': In re *Hummeltenberg*(3)." Russell, L.J., as he then was, expressed a similar view. He said, at page 582: "There can "be no doubt that upon the authorities as they stand a trust in perpetuity "for the benefit of animals may be a valid charitable trust if in the execution "of the trust there is necessarily involved benefit to the public; for if this "be a necessary result of the execution of the trust, the trust will fall within

(1) [1895] 2 Ch. 501. (2) [1898] 1 I.R., at p. 455. (3) [1923] 1 Ch., at p. 242.

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"Lord Macnaghten's fourth class in *Pemsel's* case(1)—namely, 'trusts for "'other purposes beneficial to the community'"—that is, trusts for purposes other than the relief of poverty, the advancement of education and the advancement of religion.—" So far as I know there is no decision "which upholds a trust in perpetuity in favour of animals upon any other "ground than this, that the execution of the trust in the manner defined "by the creator of the trust must produce some benefit to mankind. I cannot "help feeling that in some instances matters have been stretched in favour "of charities almost to bursting point: and that a decision benevolent to "one doubtful charity has too often been the basis of a subsequent decision "still more benevolent in favour of another. The cases have accordingly "run to fine distinctions, and speaking for myself I doubt whether some "dispositions in favour of animals held to be charitable under former decisions "would be held charitable today. For instance, anti-vivisection societies, "which were held to be charitable by Chitty, J., in In re *Foveaux*(2), and "were described by him as near the border line, might possibly in the "light of later knowledge in regard to the benefits accruing to mankind from "vivisection be held not to be charities."

In view of these authorities, it was for the Society to prove affirmatively that it was a society " established for charitable purposes only ". But not only did the Society fail to prove that fact, but the evidence called in opposition to the Society's claim proved that the main object of the Society was the total abolition of vivisection, and that the attainment of that object, so far from being beneficial, would be gravely injurious to the community. In these circumstances it was the duty of the Special Commissioners to reject the Society's claim for exemption from Income Tax.

In my opinion, therefore, this appeal must be allowed, and the order granting the exemption must be revoked.

**Mr. Jenkins.**—Will your Lordship allow the appeal with costs?

**Macnaghten, J.**—Yes.

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The Society having appealed against the decision in the King's Bench Division, the case came before the Court of Appeal (Lord Greene, M.R., and MacKinnon and Tucker, L.JJ.) on 20th, 21st and 22nd November, 1945, when judgment was reserved. On 20th December, 1945, judgment was given in favour of the Crown (Lord Greene, M.R., dissenting), with costs, confirming the decision of the Court below.

Mr. Frederick Grant, K.C., Mr. Valentine Holmes, K.C., and Mr. J. Senter appeared as Counsel for the Society, and Mr. D. L. Jenkins, K.C., Mr. J. H. Stamp and Mr. Reginald P. Hills for the Crown.

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JUDGMENT

**Lord Greene, M.R.**—The National Anti-Vivisection Society claim exemption from Income Tax on their investment income on the ground that they are a body of persons established for charitable purposes only. The claim was admitted by the Special Commissioners in spite of their view that the objects of the Society, so far from being for the public benefit, were gravely

(1) 3 T.C. 53, at p. 96. (2) [1895] 2 Ch., at p. 507.

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injurious thereto. On this ground they would have held that the Society could not be regarded as a charity had they not considered themselves bound to hold otherwise by the authority of In re *Foveaux, Cross* v. *London Anti-Vivisection Society,* decided by Chitty, J., in **1895** ([1895] 2 Ch. 501), and approved by this Court in In re *Wedgwood, Allen* v. *Wedgwood,* [1915] 1 Ch. 113.

Macnaghten, J., held on appeal that he ought not to follow In re *Foveaux* in view of certain observations upon the decision which I shall presently discuss, and that, as the attainment of the Society's object would be gravely injurious to the community, it was impossible to regard that object as charitable. From that decision the Society appeals.

It will be convenient at the outset to summarise certain findings of fact of the Commissioners. The Society is the same body as one of the three bodies concerned in the case of In re *Foveaux* under its then name of " The Victoria " Street Society for the Protection of Animals from Vivisection united with " the International Association for the Total Suppression of Vivisection "—(Case, paragraph 4). Its main object is still " the total abolition of vivi-" section, including in that term all experiments on living animals whether " calculated to inflict pain or not, and (for that purpose) the repeal of the " Cruelty to Animals Act, 1876, and the substitution of a new enactment " prohibiting vivisection altogether "—(Case, paragraph 20). " The work " of the Society is to a large extent directed towards the prevention of cruelty " to animals "—(*ibid*). The Commissioners held it to have been proved conclusively that: " (*a*) a large amount of present day medical and scientific " knowledge is due to experiments on living animals; (*b*) many valuable cures " for and preventatives of disease have been discovered and perfected by " means of experiments on living animals, and much suffering both to human " beings and to animals has been either prevented or alleviated thereby. " We are satisfied that if experiments on living animals were to be forbidden " (i.e., if vivisection were abolished) a very serious obstacle would be placed " in the way of obtaining further medical and scientific knowledge calculated " to be of benefit to the public "—(*ibid*). The weight of the evidence called on behalf of the Crown, and accepted by the Commissioners, dealt with the advances in medical knowledge made by means of experiments on animals in regard to the prevention or cure of various diseases, such as malaria, typhus and typhoid and yellow fever, diphtheria, tetanus, smallpox and diabetes. The treatment of such diseases by inoculation, vaccines or drugs, as the case may be, has been rendered possible by means of experiments on animals, whether for the purpose of ascertaining the causes of the disease, of testing the efficacy of suggested remedial treatments, or of testing the purity of drugs or vaccines. Valuable knowledge has also been gained with regard to the treatment of burns, wound infections and gas gangrene—(Case, paragraph 9). To all such experiments on animals the Society is opposed, and (as a logical consequence) it is opposed to immunisation of human beings against typhoid and diphtheria—(Case, paragraph 6).

On the question of the extent to which cruelty or the infliction of pain or suffering is involved in experiments on animals, the matter stands as follows. The Cruelty to Animals Act, 1876, was passed as a result of the report of the Royal Commission on the practice of subjecting live animals to experiments for scientific purposes, which was appointed in 1875 and reported on 8th January, 1876. The preamble recited that it was expedient to amend the law relating to cruelty to animals by extending it to the cases

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of animals subjected when alive to experiments calculated to inflict pain. Section 2 prohibited the performance of any such experiment except subject to the restrictions mentioned in the Act, and imposed penalties. Section 3 gave a list of the restrictions. It will be noticed that the Act, so far from prohibiting experiments calculated to give pain, in fact recognised that such experiments could lawfully be carried out provided that the statutory restrictions were complied with. The restrictions limited the permitted experiments to those performed with a view to the specified advancement of knowledge (paragraph (1)), or for the testing of a former discovery (proviso (4)), by a person duly licensed (paragraph (2)). The subject of pain is dealt with in paragraphs (3) and (4) and provisos (2) and (3). Paragraph (3) provides that the animal must during the whole of the experiment be under the influence of an anaesthetic of sufficient power to prevent it feeling pain; but this is subject to proviso (2) which permits the performance of experiments without anaesthetics on a certificate being given that insensibility would frustrate the object of the experiment. Paragraph (4) requires that the animal be killed before it recovers from the anaesthetic in cases where pain is likely to continue after the effect of the anaesthetic has ceased, or if serious injury has been inflicted; but this is subject to an exception, proviso (3), where a certificate is given that the killing of the animal would necessarily frustrate the object of the experiment; in such a case the animal must be killed as soon as that object has been attained. I need not take up time by referring to other provisions of the Act, which (Section 22) does not apply to invertebrate animals.

The object of the Act, therefore, was to limit and regulate experiments calculated to give pain; to provide that, save in exceptional cases, such experiments should only be carried out under an anaesthetic, and that, save in exceptional cases, the animal should be destroyed while still under the anaesthetic. It is apparently contemplated that, save in exceptional cases, pain will be eliminated by the use of anaesthetics coupled with the destruction of the animal.

One aspect of the practical operation of the Act is to be found in an extract from the Home Secretary's return for 1938 quoted in paragraph 3 of the Case. It appears that in that year 908,846 experiments were performed without anaesthetics, mostly inoculations and feeding experiments with a certain number of oral administrations, inhalations, external applications and the abstraction of body fluids. Experiments so performed, it is said, are " such as are attended by no considerable, if appreciable, pain."

Further facts bearing on the question of pain are to be found in the evidence accepted by the Commissioners and set out in the Case. In paragraph 9 (*b*) Major-General Poole's views are given. He said that " it was inevitable " that they must suffer some pain ". This pain was " pure physical pain ", and if the animals were properly treated they did not suffer any " mental " pain." He then said that " a certain portion of the experiments involved no " pain.. In addition to the tests there was the preparation of anti-serum. " There was practically no pain attached to that; just the prick of a needle." I read this as meaning that the only experiments involving no pain beyond the prick of a needle are the preparation of anti-serum. No other such " painless " experiments are referred to. The " tests " mentioned in this passage are described in paragraph 9 (*a*) of the Case and involve infecting animals with the disease.

The meaning attributed by the profession to such a phrase as a " pain- " less " experiment is illustrated in a statement at the end of paragraph 9

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of the Case. The witness pointed out that in the case of an experiment which would otherwise cause severe pain, " such as the burning of a guinea-pig ", the animal would be anaesthetised, and killed before it recovered consciousness, and would, therefore, suffer no pain at all. The word " severe " is worth noting.

In paragraph 12 of the Case there is set out a statement by Dr. Trevan with regard to 277,565 experiments conducted in the course of a year at the Wellcome Physiological Research Laboratories. He said that, " although " there were grounds for thinking that in the great majority of cases the " animal suffered no pain, it was not always possible to be certain that some " pain might not be involved. In some cases pain was inevitable." In paragraph 15 it appears that Professor Burn " did not think it possible to " distinguish between experiments on animals which caused pain and those " which did not cause pain." He took the example of neoarsphenamine injections. What had to be determined was " the dose with which only " 50 per cent. of the animals developed symptoms terminating in death. " It was quite impossible to know beforehand which of those animals was " going to suffer pain and which was not. It was very difficult to say how " much pain they would suffer, and there would be no possible means of " administering an Act which said that painless experiments need not be " reported to the Home Office, but those which caused pain must be reported. " Therefore any Act of Parliament which attempted to lay down that there " must be controlled experiments which caused pain, or that experiments " which caused pain must not be allowed, would, in fact, prevent all experi- " ments on animals. For example, feeding experiments, when the deficiency " in diet was a deficiency of vitamin D1, caused convulsions in pigeons. He " would not say that pigeons which had these convulsions suffered very much " pain, but it would be impossible for anyone to say that they suffered " none."

The whole of the evidence to which I have referred was accepted by the Commissioners, and must, therefore, be regarded as establishing the facts stated by the witnesses. With the possible exception of the preparation of anti-serum referred to by Major-General Poole, who says nothing about consequential illness as distinct from pain, the facts appear to me to show beyond question that, while in the majority of cases pain, illness, or, at best, the destruction of the animal is involved, it is quite impossible to say that in any other case pain or illness is not involved. In other words the experimenters have to take the chance without having any means of knowing whether the animal suffers or not.

This examination of the facts satisfies me that the practice, the suppression of which the Society wishes to bring about, is one which involves the ill-treatment—to use a less extreme word than " cruelty "—of animals in a manner which leads to pain and suffering, or, at the best, death, after experiment under an anaesthetic. The best that can be said of it from that point of view is that in some cases there may be no pain or suffering, but whether or not this is the case no one can tell. The controversy in the present case is whether, in view of the admittedly great—and indeed overwhelming—advantages derived from the practice of vivisection, the object of totally suppressing the practice is a good charitable object. Nothing is to be gained by pretending that the practice does not involve ill-treatment of the animals subjected to it; and to say that it does not involve cruelty because the end at which it aims is justifiable and that, therefore, its suppression cannot be a good charitable object, in truth begs the very question which we have to decide.

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It is claimed by the Society, and Chitty, J., in In re *Foveaux*(1) so decided, that its objects fall within the fourth of Lord Macnaghten's classes, namely, " other purposes beneficial to the community " not falling under any of the three preceding heads(2). The Crown relies on the findings of the Commissioners, that the objects of the Society, so far from being beneficial to the community, are positively harmful. The Society replies that this conclusion can only be reached by adopting an illegitimate method of reasoning. It is said that the objects of the Society, being to suppress a practice which involves cruelty to or at least ill-treatment of animals, fall within a well-established category of charity, and that the charitable character of those objects cannot be altered by pointing to the consequential disadvantages which would flow from the achievement of them. In particular it is said that in the present case this process of reasoning would involve the weighing of the moral benefits accruing to the community by the suppression of cruelty and the inculcation of a love of animals against the material benefits derived from the improvement in medical knowledge. The Court, it is said, has no scales in which to weigh material against moral benefits.

If, in the present state of knowledge, it were possible to achieve by some other method the results obtained by means of vivisection, so that it was merely an alternative which could be dispensed with, I entertain no doubt whatever that the total suppression of vivisection would be a good charitable object. I adopt, with respect, the elevated view of such matters expressed by Swinfen Eady, L.J., in In re *Wedgwood,* [1915] 1 Ch. 113, at page 122: " A gift " for the benefit and protection of animals ", he said, " tends to promote " and encourage kindness towards them, to discourage cruelty, and to " ameliorate the condition of the brute creation, and thus to stimulate humane " and generous sentiments in man towards the lower animals, and by these " means promote feelings of humanity and morality generally, repress " brutality, and thus elevate the human race." I accept without hesitation the view that the objects of the Society, considered by themselves and without reference to the benefits derived from vivisection, are good charitable objects and fall within a well-established category. Are those objects prevented from being good charitable objects by reason of the fact that the acts to the suppression of which they are directed produce benefits of a very high order to the human race and, indeed, to the animal kingdom itself?

It is, I think, the better view that gifts for the benefit of animals derive their charitable status not from the fact that they are for the benefit of animals, but from the fact that the community is benefited. Animals as such cannot, I think, be the beneficiaries under a charitable trust. Apart from the material benefits to be derived from the proper treatment of animals useful to man, the benefit to the community which is derived from the proper treatment of animals is a purely moral one. As Chitty, J., said in In re *Foveaux,* [1895] 2 Ch., at page 507: " Cruelty is degrading to man ", and its suppression advances " morals and education among men." The same view appears in the passage quoted above from the judgment of Swinfen Eady, L.J., in In re *Wedgwood* (*ubi supra*). The benefit, therefore, to the community at which the Society aims is a moral benefit, emphatically not a material one, and it is on that ground alone that the claim that its objects are charitable must be rested.

I will now turn to the authorities. The leading case on the topic of anti-vivisection is In re *Foveaux,* [1895] 2 Ch. 501. The Crown argues that this case was wrongly decided and should be overruled. Alternatively, the Crown

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(1) [1895] 2 Ch. 501. (2) Special Commissioners of Income Tax *v.* Pemsel, 3 T.C. 53, at p. 96.

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says that the facts as they exist today are substantially different from what they were when Chitty, J., decided In re *Foveaux*(1), and that, even if that case was rightly decided, it does not govern the present case. This latter argument (which I do not accept) I will deal with later in this judgment. In In re *Foveaux* the objects of the present Appellants were found to be the total abolition of the practice of vivisection as defined in the report of the Royal Commission. This phrase, which refers to the 1876 report, appears to mean, "the practice of subjecting live animals to experiments for scientific pur-"poses", which was the matter upon which the Commission was required to report. It was suggested that Chitty, J.'s decision was based on the view that the purpose of the maker of an alleged charitable gift was what determined whether or not it was in the eyes of the law charitable. This view cannot today be regarded as correct. But I do not think that Chitty, J., based his opinion upon it, and it is clear that this Court in In re *Wedgwood*(2) did not think so either. The real ground of his decision is, I think, that the prevention of cruelty to animals is a charitable object, and that the Society existed for the purpose of preventing a particular form of cruelty, namely, vivisection. This view he formed some nineteen years after the passing of the Cruelty to Animals Act, 1876, and with the report of the Royal Commission of 1876 before him, as appears from the record of In re *Foveaux* which we obtained from the Public Record Office.

Assuming no relevant difference in the existing circumstances is established, the decision in In re *Foveaux* appears to me to be conclusive of this appeal unless we are prepared to overrule it. It has stood for fifty years, and has been approved on numerous occasions. The authorities earlier in date than In re *Foveaux* are examined in the judgment itself. It was approved in the Irish Court of Appeal in In re *Cranston*, [1898] 1 I.R. 431, at page 443, and in 1914 it was emphatically approved in this Court in In re *Wedgwood*.

There are, however, certain observations in later cases which Macnaghten, J., held to justify him in declining to follow In re *Foveaux*. The first case is In re *Hummeltenberg, Beatty* v. *London Spiritualistic Alliance, Ltd.*, [1923] 1 Ch. 237. In that case Russell, J. (as he then was) negatived, and, in my view, correctly negatived, the view that it was for the donor and not for the Court to judge whether a gift was charitable as being for the benefit of the public(3). He added that the question whether a gift is or may be operative for the public benefit is a question to be answered by the Court by forming an opinion upon the evidence before it. The gift there in question was for training mediums, and did not fall within any established category of charity. In order, therefore, to decide whether or not it could be classed as charitable, Russell, J., held that it was necessary to examine the evidence and see whether the object of the gift was beneficial to the community. He rejected the argument that this question fell to be decided by the intention of the testator. I do not think that Russell, J.'s words are, or were, intended to be applicable to the case of a gift whose objects fall within an established category of charity. If he so intended, I must respectfully disagree.

But the case principally relied on by the Crown is that of In re *Grove-Grady, Plowden* v. *Lawrence*, [1929] 1 Ch. 557, a decision of this Court. The gift there was a peculiar one. The branch of it relevant for present purposes had for its object the acquisition of land for the provision of refuges for the preservation of "all animals, birds, or other creatures, not human". All such creatures were to be preserved from molestation or destruction by man. Romer, J., held the gift to be a good charitable gift. In the Court

(1) [1895] 2 Ch. 501. (2) [1915] 1 Ch. 113. (3) [1923] 1 Ch., at p. 242.

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of Appeal, Lord Hanworth, M.R., stated (at page 570) that societies for the abolition of vivisection are charities within the legal definition, and cited In re *Foveaux*. He referred to other authorities, and went on to say: " From " these authorities it seems clear that if the object be to enhance the condition " of animals that are useful to mankind, or to secure good treatment for " animals, whether those animals are useful to mankind or not (see per the " Vice-Chancellor in *Armstrong* v. *Reeves*, 25 L.R.Ir. 325, 341, and see per " Vice-Chancellor Wood in *Marsh* v. *Means* (1857), 3 Jur. N.S. 790), or to " insure humane conduct towards, and treatment of, them whether in respect " of a particular subjection of them to the use of mankind, as for food (In " re *Cranston*, [1898] 1 I.R. 431), or in what is called vivisection, such " objects are to be deemed charitable." He quoted with approval the passage from Russell, J.'s judgment in In re *Hummeltenberg*(1) referred to above, and proceeded to examine the facts of the case before him. He pointed out that all animals *ferae naturae*, including noxious and predatory animals, were included, and that the struggle for existence was to be given free play so that the animals living in the sanctuary would be free to molest and harry one another. Such a purpose he considered was not beneficial to animals, and did not denote any elevating lesson to mankind. On these findings the question which arises in this case, or anything approaching it, did not, of course, arise.

Lawrence, L.J., dissented, and held that the trust was a valid trust for the protection of animals, and came within the principle of In re *Wedgwood*(2). Russell, L.J. (as he then was) began his judgment as follows (at page 582): " There can be no doubt that upon the authorities as they stand a trust in " perpetuity for the benefit of animals may be a valid charitable trust if in " the execution of the trust there is necessarily involved benefit to the public; " for if this be a necessary result of the execution of the trust, the trust will " fall within Lord Macnaghten's fourth class in *Pemsel's* case(3), [1891] " A.C. 531, 583—namely, ' trusts for other purposes beneficial to the com- " ' munity '. So far as I know there is no decision which upholds a trust in " perpetuity in favour of animals upon any other ground than this, that the " execution of the trust in the manner defined by the creator of the trust " must produce some benefit to mankind. I cannot help feeling that in some " instances matters have been stretched in favour of charities almost to " bursting point: and that a decision benevolent to one doubtful charity has " too often been the basis of a subsequent decision still more benevolent " in favour of another. The cases have accordingly run to fine distinctions, " and speaking for myself I doubt whether some dispositions in favour of " animals held to be charitable under former decisions would be held charit- " able today. For instance, anti-vivisection societies, which were held to be " charities by Chitty, J., in In re *Foveaux*(4), and were described by him as " near the border line, might possibly in the light of later knowledge in regard " to the benefits accruing to mankind from vivisection be held not to be " charities." The trust in question he held not to be a good charitable trust for reasons which may be summarised thus. It was not a trust directed to ensure absence or diminution of pain or cruelty in the destruction of animal life: it would not permit the destruction, however painless, of any animal noxious to mankind or to the other animals, or even its destruction in its own interest. The carrying out of such a trust could not benefit the public. He then examined the decision in In re *Wedgwood*, and pointed out, correctly,

(1) [1923] 1 Ch. 237, 242. (2) [1915] 1 Ch. 113. (3) 3 T.C. 53, at p. 96. (4) [1895] 2 Ch. 501.

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if I may respectfully say so, that that case did not decide that any trust for the protection and benefit of animals necessarily involves a benefit to the community. This proposition appears to me to be beyond argument. A trust, for example, which has as its object, or included among its objects, the preservation of animals noxious to man, such as rats or mosquitoes, could not, I venture to think, be a good charitable trust. Such a trust could not be said to " promote feelings of humanity and morality ", to quote Swinfen Eady, L.J., again(1). No question of moral benefit to the human race would be involved, since man is entitled to protect himself as much against noxious animals as against his fellow men if they attack him. In the case of noxious animals, the suppression of cruelty in dealing with them would, however, surely be a good charitable object. Russell, L.J., thought that the benefit to humanity to be derived from the gift in In re *Wedgwood* lay in the suppression of cruelty to animals. I do not myself think, if I may respectfully say so, that the decision was based on so narrow a ground; and the weight of authority appears to me to support the proposition that, subject to what I have said with regard to noxious animals, a trust which is really and truly for the benefit of animals (which the trust in In re *Grove-Grady*(2) was not) is a good charitable trust, quite apart from the question of the suppression of cruelty, not because animals themselves are the beneficiaries, but because kindness and love towards animals are virtues, the cultivation of which is conducive to the moral advancement of humanity. I should be ashamed to hold otherwise. The proposition is not made untrue by the fact that human weakness or urgent human need persuades or compels individuals or the community at large to sacrifice the moral benefit. When this happens it merely means that a moral problem has been solved in a particular way, and that the end is thought to justify the means. It does not mean that the moral problem does not exist, or that the means are in themselves free from evil. I should not care to find myself having to argue with anyone who regarded the practice of operations on living animals as anything better than a lamentable necessity.

The decision in In re *Grove-Grady* was to the effect that the trust was not for the benefit of animals and that no benefit to the community could flow from such a trust. These conclusions were arrived at upon a consideration of the facts, in accordance with the principle stated by Russell, J., in In re *Hummeltenberg*(3). But if upon the facts the Court had come to the conclusion that the benefit of animals (excluding animals noxious to man) was the real object of the gift, I venture to think that the decision would have been different. In any case the decision in no way approaches the present case, and Russell, L.J.'s comments on In re *Foveaux*(4), though deserving the utmost respect, were dicta only. Also his proposition that the question of benefit to humanity must be decided on the evidence, although, if I may say so, indisputably correct in relation to the questions which were before him in In re *Hummeltenberg* and In re *Grove-Grady*, is liable to serious misconstruction if applied to such a problem as the present. To say that the question is whether the facts bring a gift within a category of charitable gifts is undoubtedly true: it was so laid down by Russell, J., in In re *Hummeltenberg* in opposition to the view that the intention of the donor is the decisive factor. But to say that a gift, the purpose of which is in itself charitable as falling under an established head of charity, can be taken out of that category by proof that the achievement of its purpose would bring in its train countervailing disadvantages is, as it appears to me, a different proposition altogether;

(1) [1915] 1 Ch., at p. 122. (2) [1929] 1 Ch. 557. (3) [1923] 1 Ch. 237. (4) [1895] 2 Ch. 501

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and, apart from the dicta of Russell, L.J. (if indeed this is what they mean), I know of no authority which supports it.

It is important to follow the reasoning of Russell, L.J., on this matter. In In re *Hummeltenberg* ([1923] 1 Ch., at page 240) he said this: " But no " matter under which of the four classes a gift may *prima facie* fall, it is still, " in my opinion, necessary (in order to establish that it is charitable in the " legal sense) to show (1) that the gift will or may be operative for the public " benefit, and (2) that the trust is one the administration of which the Court " itself could if necessary undertake and control." It is quite clear that, in referring to " public benefit ", the emphasis is on the word " benefit ", that is, the statement is not merely asserting that in all charitable gifts the necessary element of publicity must be present. Now this proposition cannot, I think, mean that a gift which *prima facie* falls under one of the first three of Lord Macnaghten's classes—for example, a gift for the relief of poverty, or a gift for the advancement of religion—can fail to be regarded as charitable on the ground that it may be thought to be in fact, on balance, calculated to injure rather than to benefit the community. No attempt of the kind, so far as I have been able to discover, has ever been made, much less succeeded. Cases have, of course, occurred in which a question has arisen whether the object of a gift is truly the advancement of religion or education or the relief of poverty. But I know of no case in which, this question having been answered in the affirmative, the gift was nevertheless held not to be a charitable gift.

The case of " dole " charities is a good example. These have always been regarded as good charities; but in directing schemes the Court has refused to sanction the augmentation of the doles or to increase their number, not because they were not charitable, but because the Court in its discretion has regarded them as mischievous in their results. This was strongly put by Vice-Chancellor Kindersley in *Attorney-General* v. *Marchant* (1866), L.R. 3 Eq. 424, at page 431: " I think, by common consent ", he said, " it is " established at the present day that there is nothing more detrimental to a " parish, and especially to the poor inhabitants of it, than having stated sums " periodically payable to the poor of that parish by way of charity . . . . " The only effect of such gifts is to pauperize the parish . . . . I think it " would be detrimental to the poor of these parishes to increase what has " already been dedicated to them by the testator "; and Lord Jessel, M.R., in In re *Campden Charities* (1881), 18 Ch.D. 310, at page 327, said of such a gift: " There is no doubt that it tends to demoralise the poor and benefit no " one." And in *Pemsel's* case itself ([1891] A.C., at page 572; 3 T.C., at page 88) Lord Herschell said this: " It is a mistake to suppose that men " limit their use of the word ' charity ' to those forms of benevolent assistance " which they deem to be wise, expedient, and for the public good. There " is no common consent in this country as to the kind of assistance which it " is to the public advantage that men should render to their fellows, or as " to the relative importance of the different forms which this assistance takes. " There are some who hold that even hospitals and almshouses, which are " specially mentioned by the Legislature, discourage thrift, and do upon the " whole harm, rather than good. This may be an extreme view entertained " by a few, but there are many who are strongly convinced that doles, and " other forms of beneficence, which must undoubtedly be included, however " narrow the definition given to the term ' charitable purpose ', are contrary " to the public interest; that they tend to pauperise and thus to perpetuate " the evil they are intended to cure, and ought to be discouraged rather than

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"stimulated. It is common enough to hear it said of a particular form of "almsgiving that it is no real charity, or even that it is a mischievous form "of charity. I think, then, that a purpose may be regarded by common "understanding as a charitable purpose, and so described in popular "phraseology, even though opinions differ widely as to its expediency or "utility."

The existing categories of objects regarded by the law as charitable have been fixed by judicial decision. Lord Macnaghten summarised and classified these categories(1). A gift which is shown in fact to be for the advancement of education or of religion, or for the relief of poverty, must, in my opinion, be treated by the Courts as a good charitable gift, just as if a statute had laid it down that a gift of such a description was a good charitable gift. Once the fact is established, any enquiry into consequence appears to me to be irrelevant. But it is argued that, however true this may be of Lord Macnaghten's first three classes, it cannot be true of the fourth, which actually speaks of objects "beneficial to the community". But this is to misunderstand Lord Macnaghten's language. His fourth class sweeps up a variety of objects which had been, or might in the future be, held to be beneficial to the community. In the present case, if my view of the authorities is correct, the prevention of cruelty to, or the infliction of pain upon, animals, and the benefit of animals not noxious to man, are good charitable objects which have been held to be beneficial to the public, and I do not see how at this time of day it can be asserted that a particular exemplification of those objects is not beneficial merely because in that particular case the achievement of those objects would deprive mankind of certain consequential benefits, however important those benefits may be. If this were not so, it would always be possible, by adducing evidence which was not before the Court on the original occasion, to attack the status of an established charitable object, to the great confusion of trustees and all others concerned. Many existing charities would no doubt fall if such a criterion were to be adopted. It is to be noticed that Russell, L.J., himself, in speaking of In re *Foveaux*(2), went no further than to say that anti-vivisection societies "might possibly in the light "of later knowledge in regard to the benefits accruing to mankind from vivi-"section be held not to be charities(3)." This is far from suggesting that In re *Foveaux* was wrongly decided, as the Crown now asserts. It appears to mean that an object which was originally charitable may subsequently become non-charitable because of an increase in the benefits derived from the practice at the suppression of which it is aimed. This, if I may say so with the utmost respect, is to me a novel conception, and, in the absence of authority binding upon me, I am unable to accept it.

The alternative argument of the Crown—namely, that in the light of the facts as known today the objects of the Society, however charitable they were at the date of In re *Foveaux*, cannot be regarded as charitable today because of the increase of the benefits derived from vivisection—is based on this interpretation of Russell, L.J.'s words. But, apart from the objections which, for my part, I see to the proposition of law involved, the argument appears to me to break down on the facts. The benefits derived from vivisection were in 1895 very great indeed, as appears from the report of the Royal Commission which, as I have said, was in evidence before Chitty, J., a fact which can only be ascertained by an examination of the record. Russell, L.J., does not appear to have been aware of this. It is true that a large field of

(1) 3 T.C., at p. 96. (2) [1895] 2 Ch. 501. (3) [1929] 1 Ch., at p. 582.

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benefit to humanity has since been opened up, particularly in regard to the treatment of disease. But if these benefits are now to be regarded as sufficient to deprive a gift aimed at the suppression of the ill-treatment of animals of its charitable character, I cannot see why the known benefits were not sufficient in 1895. But Chitty, J., did not even enquire into that matter.

In the present case an additional argument is available which I find convincing, that an object which falls within an established category of charity, if its qualification for holding that status consists in a moral benefit to the community, cannot be taken out of that category by proving that great material benefits are derived from the practice which the gift aims at suppressing. I cannot see how any Court can be asked to weigh material against moral benefit, however easy a particular Judge, speaking as an individual, may find it to solve the problem involved in a manner satisfactory to his own conscience.

Mr. Stamp argued that In re *Foveaux* was wrongly decided because, as he said, Chitty, J., had misused the word "cruelty". That word, he said, could not properly be used to describe the justifiable infliction of pain, and he quoted the case of *Lewis* v. *Fermor* (1887), 18 Q.B.D. 532. That case was decided upon the special language of a criminal statute and has not, in my opinion, any general application. In 1895, as in 1945, the supporters of vivisection were maintaining that the infliction of pain was justifiable; but, as Chitty, J., said ([1895] 2 Ch., at page 507), "The question of what is and what is not "justifiable is a question of morals, on which men's minds may reasonably "differ and do in fact differ." In any case, the view that the suppression of cruelty is a necessary factor in a charitable gift for the benefit of animals is not, as I have already indicated, one to which I can subscribe.

The last argument on which I must say a word is to the effect that the objects of the Society are in part at any rate non-charitable, in that they comprise the repeal of the Cruelty to Animals Act, 1876, and the promotion of legislation forbidding experiments on living animals. These objects, it is said, are "political" and "political" objects are not charitable. Lord Parker in *Bowman* v. *Secular Society, Ltd.*, [1917] A.C. 406, at page 442, referred to the objects of the Secular Society, which comprised matters of acute political controversy. It is, I think, in reference to matters of that kind that Lord Parker's language must be interpreted when he says: "A "trust for the attainment of political objects has always been held invalid, "not because it is illegal . . . but because the Court has no means of "judging whether a proposed change in the law will or will not be for the "public benefit". I feel difficulty in applying these words to a change in the law which is, in common parlance, a "non-political" question. I do not in any case think that they can apply when the desired legislation is merely ancillary to the attainment of what is, *ex hypothesi*, a good charitable object. If before the passing of the various statutes relating to cruelty to animals a society having as its object the suppression of cruelty to animals had included, as a means of attaining its main object, the ancillary object of obtaining the enactment of that very legislation, it could scarcely have been said that it thereby lost its status as a society established for charitable purposes only. A charitable institution must surely be at liberty to achieve its object by the most efficient and practical means, which may well be legislation. Some of the difficulties arising from Lord Parker's language are discussed in the 5th edition of Tudor on Charities, page 41.

I would allow the appeal.

**MacKinnon, L.J.**—The Appellant Society made a claim in December, 1943, before the Special Commissioners of Income Tax to be exempt from Income Tax on its income from investments amounting to £2,876 15*s*. 7*d*. That claim was based on Section 37 of the Income Tax Act, 1918, which provides for such exemption for the income from investments " of any body of persons " or trust established for charitable purposes only ". If this Society is established " for charitable purposes only ", those purposes must be within the fourth category in Lord Macnaghten's famous definition in *Special Commissioners of Income Tax* v. *Pemsel,* [1891] A.C. 531, at page 583 (3 T.C. 53, at page 96), namely, as being a trust " for other purposes beneficial to the " community, not falling under any of the preceding heads."

Whether this Society is " established for charitable purposes only ", that is, " for purposes beneficial to the community ", is clearly a question of fact to be decided upon evidence. The Commissioners heard a considerable amount of evidence, and its details are clearly stated in the Stated Case. Having read that account of the evidence, I am abundantly satisfied that the avowed purposes of this Society are not beneficial to the community. Indeed, I am equally satisfied that the successful achievement of those purposes would inflict incalculable injury on the community and on all mankind. The primary avowed purpose of the Society is to induce the Legislature " totally " to suppress the practice of vivisection." Other avowed objects are (1) " Opposition to the immunisation (by inoculation) of the members of the " armed forces against typhoid ", and (2) " Opposition to the immunisation " of the civil population against diphtheria." Of the immense benefits to mankind which medical research has conferred by means of what is summarily called vivisection, there was an imposing body of testimony. This evidence, say the Commissioners in the Stated Case, " we accepted in its entirety ". It is probably not too much to say that those benefits equal, if the sum of them does not exceed, the blessings on mankind bestowed earlier by the labours of Jenner, Simpson, and Lister.

The main purpose of this Society is to put an end to all further medical research of this character. And its avowed aim of preventing inoculation against typhoid and diphtheria is to deprive mankind of some of the benefits that such medical research has already conferred upon it. In short, the purposes of this Society, so far from being " beneficial to the community ", might, with reason, be stigmatized as malignantly designed for the injury of the community. It is not surprising that the Commissioners in the Stated Case state as their own conclusion of fact upon the evidence that " the object " of the Society, so far from being for the public benefit, is gravely injurious " thereto, with the result that the Society cannot be regarded as a charity." I cannot imagine that any body of sensible men, upon the evidence produced to them, could arrive at any other conclusion.

But though this was their conclusion as sensible men upon the facts, the Commissioners were unhappily persuaded that, as a matter of law, by reason of a reported case, they were constrained to hold that this Society is established for purposes beneficial to the community. That case is In re *Foveaux,* [1895] 2 Ch. 501. That case was decided by Chitty, J., as he then was, fifty years ago. It concerned bequests to two anti-vivisection societies, and the question was whether these were good charitable bequests. That question, as I conceive, involved the determination of an issue of fact. The learned Judge, at page 504, says: " To be a charity there must be some public " purpose—something tending to the benefit of the community." As it appears to me, the issue which the Judge was called upon to decide was: " Has it been proved to me, by the evidence to which I have listened, that

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" the purposes of these societies are beneficial to the community?" Incidentally, I may remark, it is not possible to discover from the report what was the evidence called at the hearing. The Judge makes no reference to it in his judgment. At the hearing of this appeal the Master of the Rolls sent to the Record Office for the file of In re *Foveaux*. From that it appeared that the material before the Court by way of evidence was the report of the Royal Commission on Vivisection of 1876. I have not had an opportunity of looking at that weighty volume, and I do not think it was necessary for me to do so. I expect that the Royal Commissioners referred to, and possibly quoted, the evidence of witnesses before them, and that there was sharp conflict of opinion between such witnesses.

If, however, I am right in thinking that the issue to be determined by the learned Judge was: " Has it been proved to me, by the evidence adduced before me, that the purposes of these societies are beneficial to the community?", he, in terms, declined to fulfil that task, giving as his reason that on this disputed issue it was the duty of the Court to " stand neutral " He says, at page 503: " The Court does not enter into or pronounce any " opinion on the merits of the controversy which subsists between the sup- " porters and opponents of the practice of vivisection. It stands neutral." And in the last words of his judgment, on page 507, he says: " The intention " (of these societies) is to benefit the community; whether, if they achieved " their object, the community would, in fact, be benefited is a question on " which I think the Court is not required to express an opinion."

I do not understand this reasoning. Surely " the controversy between the " supporters and opponents of the practice of vivisection " is simply whether the practice of that principle is or is not of benefit to the community. And that was the issue which the Court was called upon to determine. In deciding any issue of fact a tribunal cannot " stand neutral ". It must decide that one party to the dispute is right and the other party wrong. As it seems to me, the learned Judge was declining to decide the very issue that was raised before him. In finding, as he does upon page 507, that " the intention of " these societies is to benefit the community ", the Judge did not, so far as I know, rely upon evidence he had heard or read, but rather upon the fact that societies for the prevention of cruelty to animals had in previous cases been held to be charitable, and upon an assumption that the purpose of these societies was to prevent cruelty to animals. For, after referring to the cases about societies for the prevention of such cruelty, he adds (at page 507): " It would seem to follow that an institution for the prevention " of a particular form of cruelty to animals is also charitable . . . . Cruelty " is degrading to man; and a society for the suppression of cruelty to the " lower animals, whether domestic or not, has for its object, not merely the " protection of animals themselves, but the advancement of morals and " education among men." This seems to me to confuse the motives of those who support such a society as this with their money, with the purposes of the society that receives and uses that money. I readily assume that the motive which leads old women to make bequests to this Society is concern for the welfare of the dear dogs. As one who has more than once experienced the grief of losing a beloved spaniel, I can respect and applaud that motive: though I do not think my respect and applause can be expected when it becomes a matter of the dear guinea-pigs and the dear rats.

But the motive of those who provide the money is immaterial. So, I think, it was rightly held by Russell, J., as he then was, in In re *Hummeltenberg*, [1923] 1 Ch. 237. The headnote seems properly to summarise his judgment: " The opinion of the donor of a gift or the creator of

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" a trust that the gift or trust is for the public benefit does not make it " so, the matter is one to be determined by the Court on the evidence before " it." And, at page 242, he disagrees with " a sentence in the judgment " of Chitty, J., in In re *Foveaux*(1) " to the contrary.

Upon the reasoning and assumption of Chitty, J., I conceive that a society whose object was to secure legislation making illegal the manufacture and sale of rat-traps and rat poisons would have to be held established for charitable purposes; and that the more readily if the tribunal insisted on " standing neutral " upon the question whether rats are, or are not, vermin that are a menace to mankind. Indeed, if it be true, as some may think, that

*" the poor beetle, that we tread upon,*
*" In corporal sufferance finds a pang as great as when a giant dies ",*

a society to promote legislation to prohibit the manufacture and sale of all insecticides would seem to have good ground for a like claim.

For these reasons, I cannot think that the case of In re *Foveaux* constrains me, as the Commissioners thought it constrained them, to hold that the Appellant Society is " established for charitable purposes only ". It was said in argument that that case has been referred to without disapproval, or even with approval, in this Court. That may be so; but the references were only to incidental matters. The main ground of the decision has never been the subject of discussion and review. And a serious doubt as to its correctness was voiced by Russell, L.J., in In re *Grove-Grady,* [1929] 1 Ch. 557, at page 582. In this appeal its correctness is directly involved, and for my part I think it should be overruled. In truth that phrase need not be used, and is perhaps inaccurate. Chitty, J., in In re *Foveaux* had to decide a question of fact, though, as I think, he declined to decide it. The question to be decided here is one of fact, and it would be more correct to say that some of the considerations stated by the learned Judge in In re *Foveaux* as relevant to his conclusion cannot be regarded as admissible.

In the result my conclusion is that the decision of Macnaghten, J., allowing the appeal from the Commissioners was right, and that this appeal from his judgment should be dismissed with costs.

**Tucker, L.J.** (read by MacKinnon, L.J.)—Approaching, as I do for the first time, the question of the application of Lord Macnaghten's fourth division in his definition of charitable trusts in *Pemsel's* case, [1891] A.C. 531, at page 583 (3 T.C. 53, at page 96), namely, " trusts for other purposes beneficial " to the community, not falling under any of the preceding heads ", and experiencing some difficulty in ascertaining from the authorities the principles that have been applied, I am relieved to find that others more familiar with the subject have not met with any greater measure of success.

On page 103 of the 2nd edition of Tyssen's " Charitable Bequests " the authors write: " There remains the fourth of Lord Macnaghten's heads, " namely, other purposes beneficial to the community not falling under any " of the preceding heads. These purposes cannot be classified or reduced to " any principle. All we can do is to look at the cases and see what has " been decided."

More recently, in an article in the July, 1945, number of the Law Quarterly Review, from which I have derived much assistance, it is said: " The fourth " head, gifts for the benefit of the community, is a collection of disjointed

(1) [1895] 2 Ch. 501.

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" decisions, for which no complete definition or connecting principle has ever " been enunciated." If these statements are correct, as I am inclined to think they are, the Court of Appeal is, at any rate, left with a considerable measure of freedom in deciding any particular case that comes before it. Although no complete or satisfactory connecting principle may be discernible, certain propositions are, I think, established which afford some guidance to the correct approach to the problem. Two of the propositions are as follows. (1) Not all trusts beneficial to the community are charitable. Benefit to the community is an essential requisite, but there is a further necessary, if somewhat elusive, element, namely, that the trust should be analogous to trusts for purposes enumerated in or within the spirit of the Statute of Elizabeth (see *Attorney-General* v. *National Provincial Bank,* [1924] A.C. 262). (2) The question whether a gift is or may be operative for the public benefit is a question to be answered by the Court by forming an opinion upon the evidence before it: it does not depend upon the intention of the donor (see In re *Hummeltenberg,* [1923] 1 Ch. 237, and In re *Grove-Grady,* [1929] 1 Ch. 557).

No. (2) is, in my view, vital to the decision of the present case, which raises the question of the admissibility of certain evidence led for the purpose of negativing any presumption there might otherwise have been that the objects of this Society were or might be beneficial to the community. If this is a matter for the Court to decide, and if communal benefit is essential, upon what evidence is the Court to act? Upon what principle can it be said that the Court must arrive at its decision without hearing evidence as to the inestimable benefits or incalculable harm that may result to the community in any particular case? If it be said that the Court is being called upon to perform an impossible task, or one better suited to the Legislature, I would answer that this might be a good reason for removing such matters from the purview of the Courts, but that it can be no justification for requiring the Courts to adjudicate blindfold. No authority has been cited for the proposition that such evidence is inadmissible save the statements of Chitty, J., in In re *Foveaux,* [1895] 2 Ch. 501, where he says, at page 503, referring to this particular Society: " In determining this question of charity the Court " does not enter into or pronounce any opinion on the merits of the con- " troversy which subsists between the supporters and opponents of the practice " of vivisection. It stands neutral "; and later, at page 507: " The purpose " of these societies, whether they are right or wrong in the opinions they hold, " is charitable in the legal sense of the term. The intention is to benefit " the community; whether, if they achieve their object, the community would, " in fact, be benefited is a question on which I think the Court is not required " to express an opinion."

With great respect, this seems to me to conflict with the later decisions in In re *Hummeltenberg* and In re *Grove-Grady* to the effect that it is the function of the Court to decide the question of benefit to the community on the evidence before it, and appears to be an abdication by the Court of its functions in favour of the intention of the donor, based on some supposed irrebuttable presumption of moral benefit to the community resulting from a movement directed to the alleviation or prevention of suffering amongst animals. In this connection I would observe that in the case of societies for the prevention of cruelty to animals, one would not normally expect to find any conflict between the moral benefit and the material disadvantages

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to man resulting from the diminution of cruelty. We are, as a race, peculiarly solicitous for the welfare of animals, but, none the less, both the law and the practice of society recognise that animals may be used for the service and benefit of man, even at the expense of the infliction of some suffering. The offence of " cruelty ", broadly speaking, involves an element of wantonness or the causing of unnecessary suffering, and, in considering what is necessary or justifiable, the requirements of man are to some extent taken into consideration. If, however, in the case of a trust for the benefit of animals, such a conflict does arise, it is, in my view, the duty of the Court to decide, and to decide on the evidence adduced with reference to the resulting benefit or detriment to the community.

Counsel for the Society relied on the passage in the judgment of FitzGibbon, L.J., in the case of In re *Cranston,* [1898] 1 I.R. **431**, at page **446**, quoted with approval in In re *Wedgwood,* [1915] 1 Ch. **113**, at page **117**, by Lord Cozens-Hardy, M.R., in which he said: " Any gift which " proceeds from a philanthropic or benevolent motive, or which is intended " to benefit an appreciably important class of our fellow-creatures (including, " under decided cases, animals), and which will confer the supposed benefit " without contravening law or morals, will be ' charitable '."

Here I would emphasise the words, " and which will confer the supposed " benefit ", as indicating the duty of the Court to enquire whether the benefit will in fact result. These words were again quoted with approval by Lord Hanworth, M.R., in In re *Grove-Grady,* [1929] 1 Ch. **557**, at page **572**; but as it is clear from the judgments in that case that the Court considered that benefit to the community, and not merely to the animals, was necessary, I doubt whether it was intended to endorse the view, if indeed FitzGibbon, L.J., ever held it, that benefit to the animal, alone, irrespective of any resulting moral or material benefit to mankind, would suffice to satisfy the requirements of Lord Macnaghten's fourth head. But however this may be, I know of no English authority for the proposition that, once some benefit to animals is established, the Court is precluded from receiving evidence as to the corresponding detriment to mankind. Such a proposition appears to me to be negatived by the whole trend and reasoning of Russell, L.J.'s judgment in In re *Grove-Grady*.

If such evidence is admissible, as, in my opinion, it is, this case is concluded in favour of the Crown, since the evidence given before, and accepted by, the Special Commissioners was all one way and stood uncontradicted and unchallenged.

I am in complete agreement with the judgment of Macnaghten, J., and consider that this appeal should be dismissed, and that the case of In re *Foveaux*(1) must be overruled.

**Lord Greene, M.R.**—Mr. Grant, the appeal is dismissed with costs.

**Mr. Grant.**—Would your Lordship give the Society leave to appeal to the House of Lords, if they desire to do so, after considering your Lordships' judgments?

**Lord Greene, M.R.**—What do you say, Mr. Stamp?

**Mr. Stamp.**—I cannot resist that, if they want to go to the House of Lords.

(1) [1895] 2 Ch. 501.

**Lord Greene, M.R.**—Very well, Mr. Grant.

**Mr. Grant.**—If your Lordship pleases.

**Mr. Stamp.**—After the decision of the Special Commissioners, tax was repaid to the Society. I ask that that should now be repaid to the Commissioners of Inland Revenue.

**Lord Greene, M.R.**—Yes, there will be the usual Order about that.

**Mr. Stamp.**—If your Lordship pleases.

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The Society having appealed against the decision in the Court of Appeal, the case came before the House of Lords (Viscount Simon and Lords Wright, Porter, Simonds and Normand) on 25th, 27th and 28th February and 3rd and 4th March, 1947, when judgment was reserved. On 2nd July, 1947, judgment was given in favour of the Crown (Lord Porter dissenting), with costs, confirming the decision of the Court below.

Mr. Frederick Grant, K.C., Sir Valentine Holmes, K.C., and Mr. J. Senter appeared as Counsel for the Society, and the Attorney-General (Sir Hartley Shawcross, K.C.), Mr. D. L. Jenkins, K.C., Mr. J. H. Stamp and Mr. Reginald P. Hills for the Crown.

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## JUDGMENT

**Viscount Simon.**—My Lords, in this very important and most difficult case, going as it does to the foundations of the conception of one kind of charitable trust, I have read and re-read the opinion which has been prepared by my noble and learned friend Lord Simonds. Notwithstanding views to a different effect which are to be found in the minority judgment of Lord Greene, M.R., in the Court of Appeal, and in another opinion about to be pronounced in this House, I cannot escape from the course of argument contained in Lord Simonds' opinion, or from the conclusion at which he arrives. I therefore move that this appeal be dismissed with costs.

**Lord Wright.**—My Lords, the issue in this case is whether the Appellant Society is entitled to exemption from Income Tax under Section 37 of the Income Tax Act, 1918, on the ground that it is a body established for charitable purposes only. The year of charge is the year ending 5th April, 1943, and the subject is the Appellant's invested income aggregating £2,876 15*s*. 7*d*. The Special Commissioners before whom the matter came felt bound to allow the claim on the authority of In re *Foveaux, Cross* v. *London Anti-Vivisection Society*, [1895] 2 Ch. 501, in which Chitty, J., had held that the Society was a charity, though they would, apart from authority, have held that on balance the object of the Society, so far from being for the public benefit, was gravely injurious thereto and therefore that the Society could not be regarded as a charity. They also on the ground of the same authority rejected the argument that the Society could not claim to be a charity because the alteration of the law by means of legislation was a main object of the Society. That decision was reversed by the Revenue Judge, Macnaghten, J., and his decision was affirmed on appeal by the Court of Appeal, by a majority, Lord Greene, M.R., dissenting.

The Commissioners heard a great deal of evidence, and their material conclusions in the Case they stated were: " We are satisfied that the main " object of the Society is the total abolition of vivisection, including in that " term all experiments on living animals whether calculated to inflict pain

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" or not, and (for that purpose) the repeal of the Cruelty to Animals Act, **1876,** " and the substitution of a new enactment prohibiting vivisection altogether. " . . . . We think it has been proved conclusively that:— (*a*) a large amount " of present day medical and scientific knowledge is due to experiments on " living animals; (*b*) many valuable cures for and preventatives of disease " have been discovered and perfected by means of experiments on living " animals, and much suffering both to human beings and to animals has been " either prevented or alleviated thereby. We are satisfied that if experiments " on living animals were to be forbidden (i.e., if vivisection were abolished) " a very serious obstacle would be placed in the way of obtaining further " medical and scientific knowledge calculated to be of benefit to the public."

They were also prepared, if it was to be assumed that any public benefit in the direction of the advancement of morals and education amongst men would or might result from the Society's efforts to abolish vivisection, of which they had no express evidence, and if their function was to determine the case on the footing of weighing an assumed public benefit in the direction of the advancement of morals amongst men, which could or might result from the Society's efforts to abolish vivisection, to hold on the evidence that any such assumed public benefit was far outweighed by the detriment to medical science and research and consequently to the public health that would result if the Society succeeded in its object, and that, on balance, the object of the Society, so far from being for the public benefit, was gravely injurious thereto, with the result that the Society could not be regarded as a charity.

I think the first thing to examine is whether In re *Foveaux*(1) was rightly decided and whether the Commissioners were justified in regarding themselves as bound by the authority.

Before examining In re *Foveaux* it will be convenient to bear in mind what is now generally accepted, that the question whether a gift or fund is charitable is a matter for the decision of the Court on all the materials before it. " Charitable " in this context has reference to charitable in the legal sense. " Charity ", indeed, is here a word of art of precise and technical meaning. From very early times the decision was the function of the Court. Thus, rules grew around the very sketchy list in the Statute of Elizabeth (**43** Eliz., c. **4**). Judicial precedents were established. An early attempt to simplify the problem by a classification under main heads was the summary under four heads submitted by Sir Samuel Romilly (then Mr. Romilly) arguing in *Morice* v. *Bishop of Durham,* 10 Ves. 522. These heads were, first, relief of the indigent; second, advancement of learning; third, the advancement of religion; fourth, which is the most difficult, the advancement of objects of general public utility. This classification substantially was adopted by Lord Macnaghten about **85** years later in his famous list of charitable purposes in *Special Commissioners of Income Tax* v. *Pemsel,* [1891] A.C. 531, at page **583** (3 T.C. 53, at page **96**), which is too familiar to call for quotation here. The noble and learned Lord had emphasised that he was discussing the legal meaning of charity; like Sir Samuel Romilly he remarked on the distinction between the popular and the legal meaning of the word.

It is not necessary at this time of day to observe that not every object which is beneficial to the community can be regarded as charitable. The legal significance is narrower than the popular. This was fully and explicity held by this House in *Attorney-General* v. *National Provincial Bank,* [1924] A.C. 262, which followed In re *Macduff,* [1896] 2 Ch. **451**, and was discussed more recently, but more in relation to the construction of general words than

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to specific instances, in *Chichester Diocesan Fund* v. *Simpson,* [1944] A.C. 341. Even if the object were in some sense beneficial to the community, it would still be necessary to discover that it fell within the spirit and intendment of the instances given in the Statute of Elizabeth. Healthy and manly sports are certainly in fact beneficial to the public, but apart from special concomitants are not generally entitled to qualify as charitable objects. On the other hand, societies or institutes for scientific research would generally be charities as being for the benefit of mankind under the fourth head or, alternatively, as falling within the extended significance given to education or the advancement of learning, which includes, in modern times, science. Even societies coming within the first three heads of Lord Macnaghten's classification would not be entitled to rank as legal charities if it was seen that their objects were not for the public benefit. Where a society has a religious object it may fail to satisfy the test if it is unlawful, and the test may vary from generation to generation as the law successively grows more tolerant. Lord Parker in *Bowman* v. *Secular Society, Ltd.,* [1917] A.C. 406, at pages 448 and following, gives a long list illustrating this principle. It cannot be for the public benefit to favour trusts for objects contrary to the law. Again, eleemosynary trusts may, as economic ideas and conditions and ideas of social service change, cease to be regarded as being for the benefit of the community. And trusts for the advancement of learning or education may fail to secure a place as charities if it is seen that the learning or education is not of public value. The test of benefit to the community goes through the whole of Lord Macnaghten's classification, though as regards the first three heads it may be *prima facie* assumed unless the contrary appears.

In re *Foveaux* ([1895] 2 Ch. 501) was decided in 1895 by Chitty, J. The headnote is simply: " Societies for the suppression and abolition of vivisection " are charities within the legal definition of the term ' charity '." The particular societies in question were either the predecessors of the present Appellant or were substantially identical for all relevant purposes. The object, as stated by Chitty, J., was the total suppression of the practice of vivisection. At the time when the decision was given, an Act entitled the Cruelty to Animals Act, 1876, was in force; that Act made it unlawful and an offence to perform on a living animal any experiment calculated to give pain except subject to the restrictions imposed by the Act. One provision was that the particular experiment was to be performed with a view to advancement by new discovery of physiological knowledge, or of knowledge which will be useful for saving or prolonging life or alleviating suffering. It was generally required by the Act that the animal should be under a sufficient anaesthetic, save in special circumstances in which case a certificate was necessary under stringent conditions, and experimenters were to hold a licence. This Act has remained in force since then. Its repeal is the main object of the Appellant Society. Chitty, J., refers to the Act as being the subject of controversy between the supporters and opponents of the practice of vivisection. The former, he said, argue that the practice under carefully guarded provisions is justifiable because it tends to promote the welfare of the human race and even animals. The latter argue that the practice is really unjustifiable. The Judge seemed disposed to regard the issue as depending on how the element of the improvement of morality was to be considered. But he had already accepted the position that the Court does not enter into or pronounce any opinion on the merits of the controversy between these two sides. Though he knew of the report of the Royal Commission on vivisection, the Court, he said (at page 503), " stands neutral." Later in his judgment he said (at page 507) that the intention is to benefit the community; whether, if they achieved their object, the community would in fact be benefited is a question on which the Court

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is not required to express an opinion. Whatever else is clear, it is I think clear that the question he is proposing involves the balancing of utilities. I cannot understand how the Judge could avoid deciding the very question necessary for his decision, namely, whether the Society satisfies the fourth head, as being beneficial to the community. That I think is the test he proposes. He questions if the infliction of pain is necessarily cruelty. It may be justifiable, he concedes, but that, he thinks, is a question of morals on which men's minds may differ. But he seems to conclude the matter by holding that the intention of the creator of the trust is to benefit the community. That he treats as decisive, he declines to determine whether the community would in fact be benefited.

This judgment has stood since it was delivered. Though it has not been reversed it has been severely criticised by a great authority, Lord Russell of Killowen, though by way of dictum and not decision. There have also been other judicial pronouncements which may have to be considered.

The earlier of the cases in which Russell, J., as he then was, adverted to this question was In re *Hummeltenberg, Beatty* v. *London Spiritualistic Alliance, Ltd.*, [1923] 1 Ch. 237; the matter in that judgment most material to the discussion of Chitty, J.'s judgment is shortly expressed in the headnote: "The opinion of the donor of a gift or the creator of a trust that the gift "or trust is for the public benefit does not make it so, the matter is one to be "determined by the Court on the evidence before it." Russell, J., at page 242, rejected the contention on the lines of the views expressed in In re *Cranston*, [1898] 1 I.R. 431, and by Chitty, J., in In re *Foveaux*(1). Russell, J., clearly defined his opinion, at page 242: "If a testator by stating or indicating his "view that a trust is beneficial to the public can establish that fact beyond "question, trusts might be established in perpetuity for the promotion of all "kinds of fantastic (though not unlawful) objects, of which the training of "poodles to dance might be a mild example. In my opinion the question "whether a gift is or may be operative for the public benefit is a question "to be answered by the Court by forming an opinion upon the evidence "before it."

I accept these observations as correctly stating the law. They were in fact adopted by the majority of the Court of Appeal in the next case I shall cite, which is an "animal" case, it is In re *Grove-Grady, Plowden* v. *Lawrence*, [1929] 1 Ch. 557. It is sufficient here to record that the purpose of the society contemplated by the trust was the acquisition of land for the provision of refuges for the preservation of "all animals birds or other creatures not "human". The principle of the decision was that there could not be a legal charitable trust unless its execution involved a benefit to the community. Hence a trust for the benefit of animals would not merely on that ground be charitable. There must be a further element, in particular that the discouragement of cruelty promotes humane sentiments in man towards the lower animals, which involves moral benefit to the human community. Russell, L.J., as he then was, at page 588, reiterated the proposition that "the "Court must determine in each case whether the trusts are such that benefit "to the community must necessarily result from their execution." He added significant words: "The authorities have, in my opinion, reached the "furthest admissible point of benevolence in construing, as charitable, gifts "in favour of animals, and for myself, I am not prepared to go any further."

The same warning had been uttered by Lord Sterndale, M.R., in In re *Tetley*, [1923] 1 Ch. 258, at page 266. "I confess," he said, "I find "considerable difficulty in understanding the exact reason why a gift for

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(1) [1895] 2 Ch. 501.

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" the benefit of animals, and for the prevention of cruelty to animals generally, " should be a good charitable gift, while a gift for philanthropic purposes, " which, I take it, is for the benefit of mankind generally, should be bad as " a charitable gift." Lord Sterndale, M.R., agreed with the principles stated by Russell, J., which formed the basis of the decision of the Court of Appeal.

It is clear that In re *Grove-Grady*(1) was not inconsistent with the general view in favour of preventing cruelty to animals. The trust in that case did not protect the weaker animals from the cruelty of the stronger and more savage, because the idea of the testatrix was to provide a sanctuary in which animals might be free from the danger of being shot or trapped or otherwise maltreated by human beings, though left at liberty to indulge their natural instincts of inherent cruelty against each other. In re *Wedgwood, Allen* v. *Wedgwood*, [1915] 1 Ch. 113, was discussed in that case. The trust there was to apply the fund for the protection and benefit of animals. It was held to be valid on the ground that it was calculated to promote public morality by checking the innate tendency to cruelty. Much that was said in that case clearly went too far. The emphasis of the actual decision, however, was that the moral benefit to mankind consisted in promoting feelings of kindness towards animals, and thus promoting feelings of humanity and morality generally. The limitation of the doctrine to animals useful to man which was prominent in the earlier of the " animal " cases, *University of London* v. *Yarrow* (1875), 1 De G. & J. 72, was lost sight of, or at least had fallen into the background, in view of the wider and less specific doctrine of moral improvement, which was held to satisfy the requirement of benefit to the community under the fourth head of Lord Macnaghten's classification. It was held to be present in In re *Wedgwood* but absent in In re *Grove-Grady, but in neither case was it ignored.*

I do not intend to make a complete anthology of the " animal " cases, but I must refer shortly to the most important of the Irish cases on gifts for the benefit of animals, namely, In re *Cranston, Webb* v. *Oldfield*, [1898] 1 I.R. 431, a decision of the Irish Court of Appeal. There the bequest was in favour of a vegetarian society, whose purpose was to stop the killing of animals for food, which was condemned as being inconsistent with the rights of animals and calculated to produce demoralising effects upon men. The validity of the gift was upheld by the majority of the Irish Court of Appeal, largely for reasons taken to be derived from In re *Foveaux*(2). But a powerful dissenting judgment was delivered by Holmes, L.J. He was content, indeed, to distinguish In re *Foveaux*, but he demanded to know if a belief by the promoters in the utility of their project to eliminate the use of animal food could make it a charity in any sense which the law attached to that term. If so, he said, at page 457, every object not actually immoral or illegal must be held a charity. He enforced his opinion by giving instances of matters which might be conceived to be beneficient agencies by a few idealists or cranks.

The result so far has been that it is necessary for your Lordships to decide whether In re *Foveaux* was rightly decided, or perhaps more accurately, whether the Commissioners were right in thinking that it governed the case before them. No doubt Chitty, J., had in the report of the Royal Commission on vivisection, which was before him, amply sufficient evidence of the utility of vivisection, and hence of the mischief of any project aimed at making it unlawful. But it is not clear how far he had appreciated the full force of the evidence. The evidence now produced of the enormous advances in science and research, which has been accepted by the Commissioners in their

(1) [1929] 1 Ch. 557. (2) [1895] 2 Ch. 501.

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findings of fact on the utility of vivisection, is indeed such as no fair-minded man could refuse full credence. It is conclusive to my mind; besides, the findings are binding on your Lordships. In re *Foveaux*(1) has been the subject of much discursive comment, but it has not been the subject of decision in this House until the present case. The fact that it has stood so long cannot bar this House from reversing it if your Lordships are satisfied that it is wrong. *Bourne* v. *Keane,* [1919] A.C. 815, is sufficient authority as to the general powers of the House, or as I should say, its duty. One of the most important aspects of the judicial functions of this House is to harmonise or correct the decisions of the lower Courts, even though, as Lord Birkenhead, L.C., said, at page 830, it would be " overruling decisions which have been treated as " binding for generations."

In my opinion In re *Foveaux* was wrongly decided and should now be reversed. Chitty, J., was wrong in taking the intention of the donor as a sufficient test that the gift was charitable. That is vital. He was wrong in holding that he could stand neutral and not decide, on the facts before him, the question whether the gift was for the public benefit. If he stood neutral he could not decide in favour of one side and against the other side. He was inconsistent in holding that the gift was charitable while at the same time refusing to decide whether it was for the public benefit: unless he so decided in favour of the gift he could not decide that it was charitable. If he was not satisfied that the propaganda and expenditure for the suppression of vivisection were beneficial to the community, he could not hold that the activities of the Society were charitable. He was also wrong in deciding that he could not weigh against each other the detriment inseparable from suppressing vivisection on the one hand and on the other hand the benefit to the community of higher moral standards said to be due to enhanced regard for the well-being of animals. There is not, so far as I can see, any difficulty in weighing the relative value of what is called the material benefits of vivisection against the moral benefit which is alleged or assumed as possibly following from the success of the Appellant's project. In any case the position must be judged as a whole. It is arbitrary and unreal to attempt to dissect the problem into what is said to be direct and what is said to be merely consequential. The whole complex of resulting circumstances of whatever kind must be foreseen or imagined in order to estimate whether the change advocated would or would not be beneficial to the community. The Commissioners have abstained from any but the vaguest finding on the possibility of moral benefit; they had no evidence, they said, on the point. But at the highest the assumed or alleged benefit is indirect and problematical. There is clearly no general consensus of opinion or understanding against the practice of vivisection which has been permitted by Parliament as regulated under the Act of 1876. That Act has stood all these years substantially without any serious attack. It seems that people's moral feelings are not weakened nor their objections to cruelty to animals reduced by the existence of the Act. If they think about it at all they think of the immense and incalculable benefits which have resulted from vivisection: if that involves some measure of pain at times to some animals, notwithstanding the Act, they feel that it is due to a regrettable necessity. Similarly a man who has a beefsteak for dinner, if he thinks at all about the slaughter of the beast, reflects that that is inevitable in the present constitution of society. I do not question that a high degree of regard for animals is a good thing. But it must be a regulated regard. Cruelty, that is purposeless cruelty, whether through brutality or through a purpose to satisfy our pleasure or our pride, cannot be forgiven. It is indeed also a penal offence at law. But it is impossible to apply the word cruelty to efforts of the high-minded scientists who have devoted themselves to vivisection

(1) [1895] 2 Ch. 501.

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experiments for the purpose of alleviating human suffering. Harvey was only able to publish in 1628 his great work, *De motu cordis,* because he had been given deer from the Royal park for purposes of vivisection. Countless millions have benefited from that discovery. I do not minimise the suffering of the unfortunate deer. The subject of vivisection is not a consenting party, nor does it benefit. But I put against that the benefit to humanity. It has been argued that a Court cannot weigh moral and material benefits against each other. This is not the place to accept or reject Bentham's pronouncement that " measure for measure pushpin is as good as poetry ", or debate whether utilitarian or intuitionist ethics is the truer theory. But in ordinary life people often have to decide between a moral and a material benefit. However, I do not think that is a fair statement of the issue. The scientist who inflicts pain in the course of vivisection is fulfilling a moral duty to mankind which is higher in degree than the moralist or sentimentalist who thinks only of the animals. Nor do I agree that animals ought not to be sacrificed to man when necessary. A strictly regulated amount of pain to some hundreds of animals may save and avert incalculable suffering to innumerable millions of mankind. I cannot doubt what the moral choice should be. There is only one single issue.

I have great sympathy with much that the Master of the Rolls has said in his powerful dissenting judgment. I have a great love for animals and some familiarity with certain classes. I am sorry that rabbits, a weak and an innocent but monstrously destructive race, should have to be destroyed in great numbers, as they were and are being, to save our people from qualified starvation. I agree with the Master of the Rolls that rats, beetles and other pests, if they have to be destroyed, should be destroyed with as little cruelty as possible. But destroyed they must be. The lives of animals at the best are precarious. Millions have perished in the last frost. That is a regrettable necessity. But however it is looked at, the life and happiness of human beings must be preferred to that of animals. Mankind, of whatever race or breed, is on a higher plane and a different level from even the highest of the animals who are our friends, helpers and companions. No one faced with the decision to choose between saving a man or an animal could hesitate to save the man.

I have turned for a while to considerations of fact because that is inevitable in balancing conflicting values. To my mind the scale of the anti-vivisectionist mounts up and kicks the beam. A statesman is constantly weighing conflicting moral and material utilities.

I must add that I have great doubt, even apart from the final argument which I shall advert to in a moment, that the object of abolishing vivisection can on any view be regarded as being in law a public charitable object. It is not analogous to any of the objects enumerated in the preamble to the Statute. Its only claim to be admitted must rest on the fourth head. To get into that class it must be established that it is beneficial to the community. What it seems to do, however, is to destroy a source of enormous blessings to mankind. That is a positive and calamitous detriment of appalling magnitude. Nothing is offered by way of counterweight but a vague and problematical moral elevation. The law may well say that, quite apart from any question of balancing values, an assumed prospect or possibility of gain so vague, intangible and remote cannot justly be treated as a benefit to humanity, and that the Appellant cannot get into the class of charities at all unless it can establish that benefit. If it fails it can still continue to carry on such lawful purposes as the members desire and its funds, exiguous as they are, permit. Apart from the " animal " cases I cannot find any precedent for such an object being held charitable. On the other hand, the vivisectionists, who

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are attacked, can fairly claim that their purpose is charitable and would generally be so recognised either under the fourth head of the accepted classification or under the head of advancement of learning. I think that the whole tendency of the concept of charity in a legal sense under the fourth head is towards tangible and objective benefits, and at least that approval by the common understanding of enlightened opinion for the time being is necessary before an intangible benefit can be taken to constitute a sufficient benefit to the community to justify admission of the object into the fourth class. By this test the claim of the Appellant Society would fail.

But there is another and essentially different ground on which, in my opinion, it must fail; that is, because its object is to secure legislation to give legal effect to it. It is, in my opinion, a political purpose within the meaning of Lord Parker's pronouncement in *Bowman* v. *Secular Society, Ltd.*, [1917] A.C., at page 442. Lord Parker was discussing in a different connection the same question of the true criterion for deciding if charitable gifts are for the benefit of the public in the legal sense; he was there referring to the objects enumerated in the memorandum of association of the Secular Society, Ltd. He said: " Now if your Lordships will refer for a moment to the society's " memorandum of association you will find that none of its objects, except, " possibly, the first, are charitable. The abolition of religious tests, the " disestablishment of the Church, the secularization of education, the alteration " of the law touching religion or marriage, or the observation of the Sabbath, " are purely political objects. Equity has always refused to recognize such " objects as charitable. It is true that a gift to an association formed for " their attainment may, if the association be unincorporated, be upheld as an " absolute gift to its members, or, if the association be incorporated, as an " absolute gift to the corporate body; but a trust for the attainment of political " objects has always been held invalid, not because it is illegal, for everyone " is at liberty to advocate or promote by any lawful means a change in the " law, but because the Court has no means of judging whether a proposed " change in the law will or will not be for the public benefit, and therefore " cannot say that a gift to secure the change is a charitable gift." While I was preparing this part of my opinion, my noble and learned friend Lord Simonds was kind enough to draw to my attention the passage which in due course your Lordships will hear quoted by him from a work of authority, Tyssen on Charitable Bequests. It is, I think, a very important contribution to this question. It appears to me to go to explain and justify Lord Parker's opinion. I refer especially to Tyssen's words (page 176): " The law could " not stultify itself by holding that it was for the public benefit that the law " itself should be changed ", and again: " Each Court . . . must decide on " the principle that the law is right as it stands." I am reminded of the words of a great common law Judge who warned the Courts against usurping the function of the Legislature. I do not regard the statements of Lord Parker and Tyssen as inconsistent but as complementary.

In my opinion the Respondents' objection under this head is well founded. The Commissioners held that " the alteration of the law by means of legislation " is a main purpose of the Society, but the repeal of the Act of Parliament " (i.e., 39 & 40 Vict., c. 77) " (the Cruelty to Animals Act, 1876, which I have referred to above) " was undoubtedly part of the Society's object in 1895 ". They accordingly felt bound to follow Chitty, J., on this point as they had done on the first point.

Your Lordships are not bound by the judgment of Chitty, J., and I prefer the reasoning on the point of Rowlatt, J., in *Commissioners of Inland Revenue* v. *Temperance Council of the Christian Churches of England and Wales*, 10 T.C. 748. Rowlatt, J., held in respect of the respondent in that

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appeal that the purpose was not charitable but political within the meaning of the principle stated by Lord Parker. He held that legislation occupied the greater part of the field in the description of the objects of the respondent. He held that any purpose of influencing legislation is a political purpose in this connection on the clear authorities: that the respondent's direct purpose was to effect changes in the law and that was not a charitable purpose. He distinguished what he called the anti-vivisection cases (that is, the cases which I have been discussing) on the ground that in them the alteration of the law was subsidiary and not a main purpose. While I agree with the decision of Rowlatt, J., I venture to think that he fell into error in distinguishing, as he did, the anti-vivisection cases, or at least that his assumed ground of distinction could not be applied in the present case.

The Commissioners here held categorically, as already stated, that the repeal of the Cruelty to Animals Act, 1876, and the substitution of a new enactment prohibiting vivisection altogether, was the main object of the Society. I accordingly treat the judgment of Rowlatt, J., which I have just cited, as a precise authority from that very eminent Judge to support my conclusion that on this special ground, in addition to the others I have mentioned, the objects of the Appellant Society were not charitable. Rowlatt, J.'s judgment was distinguished but not disapproved by Lawrence, L.J., in In re *Hood,* [1931] 1 Ch. 240, at page 252. " In that " case ", he said, " the gift was not for the promotion of temperance generally, " but was for the promotion of temperance mainly by political means ". These words, *mutatis mutandis,* can be applied aptly to the present case. The illustrations given by Lord Parker in the passage quoted above show clearly what meaning he attached to the word political. It was not limited to party political measures, but would cover activities directed to influence the Legislature to change the law in order to promote or effect the views advocated by the Society. Such a change would be in the same category as the instances given by Lord Parker of what he regarded as political objects, and would exclude the Appellant from the category of charities. Its proposed object is of a public and very controversial character. The present capacity of the Appellant Society is not great, but the possibilities of political agitation would be immensely increased if a few millionaires were to endow it with great financial resources. This conclusion does not in any way extend or affect the freedom of the Society to promote their cause, which is lawful enough, by any legitimate or proper means. But it does prevent them from claiming the benefit of being immune from Income Tax, which would amount to receiving a subsidy from the State to that extent. Lord Parker was, I think, merely enunciating a specific limitation on the exent of the legal definition of charitable trusts. There are in this case stronger grounds than Lord Parker contemplated in his broader statement of principle for the Court declining to say that a gift to secure the change is a charitable gift.

I should dismiss the appeal.

**Lord Porter.**—My Lords, the question what is or is not a charity is always a difficult problem, partly, I think, owing to the fact that the meaning now attributed to the word is derived from the preamble to the Act of Elizabeth, which, though the Act itself has been repealed, has been re-enacted, and gives a kind of example of the class of matters then held to be charitable. From this beginning legal decisions have extended the meaning of the word to many matters which would not originally have been included.

But the difficulty does not lie in the origin of the doctrine alone. It is, I think, inherent in the subject-matter under consideration. Whether any two persons would agree in all cases as to what " charity " should include is at

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least doubtful. It is not the law but the diversity of subjects which creates the difficulty.

A step towards a closer definition was, however, reached in *Pemsel's* case[1] [1891] A.C. 531, in Lord Macnaghten's well-known speech dividing charitable objects into four classes, with the result that at the present day all claims to embrace an object under the head of a charity must assert that it comes within one of the four classes. In the present case the Appellants claim to come under the fourth head.

"Charity", says Lord Macnaghten, at page 583[2], "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." In this language it might well have been argued that trusts for any of the first three objects were charitable whether they were beneficial to the community or not, but that inclusion in the fourth class is only permissible if such benefit can be shown. I cannot, however, find that such a contention has been put forward. It was expressly repudiated by both sides in the present case, and rejected by Russell, J., as he then was, in *Hummeltenberg's* case, [1923] 1 Ch. 237, at page 240. One must take it, therefore, that in whichever of the four classes the matter may fall, it cannot be a charity unless it is beneficial to the community, or to some sufficiently defined portion of it.

The difficulties of the present case arise firstly in determining what is of benefit to the public, and who is to determine that question; but a not less difficult, though perhaps less subtle, question is as to whether the objects of the Appellant Society are political within the meaning of that word as used by Lord Parker in *Bowman's* case, [1917] A.C. 406, at page 442.

The facts have been fully stated by my noble and learned friend Lord Simonds, and he has quoted the material passages from the findings of the Commissioners. In so far as those findings are for them and are determinative of the matter in issue, your Lordships are of course bound by their decision. The only questions, therefore, are (1) whether the finding of the Commissioners that "the main object of the Society is the total abolition of "vivisection . . . and (for that purpose) the repeal of the Cruelty to Animals "Act, 1876, and the substitution of a new enactment prohibiting vivisection "altogether" amounts to a finding that the Society's object is political in the sense in which that word is used when it is said that political objects are not charitable; and (2) whether the finding that "any assumed public benefit in "the direction of the advancement of morals and education was far out-"weighed by the detriment to medical science and research and consequently "to the public health which would result if the Society succeeded in achieving "its object, and that, on balance, the object of the Society, so far from being "for the public benefit, is gravely injurious thereto" is a finding of fact as a result of which your Lordships ought to hold that the objects of the Society are not charitable.

My Lords, before dealing with the first question, I would desire to point out that read strictly the second finding would appear to contrast moral and educational advancement with the public health, and so to contrast an ethical with a material benefit.

It was, however, strenuously and, I think, successfully urged by the Respondents that this was not an accurate summing up of the position. The object of curing human, or even animal, illness and suffering itself aims at a moral end, and the question is not fairly stated as a conflict between material

(1) 3 T.C. 53. (2) *Ibid.*, at p. 96.

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and moral benefits, but, as Mr. Grant on the part of the Appellants was prepared to accept, as a conflict between one ethical outlook and another. His point was not that the material must give place to the moral, but that the Commissioners or the Court are not empowered to decide such a question. In the words of Chitty, J., in *Foveaux's* case, [1895] 2 Ch. 501, at page 503, the Court " stands neutral."

The Commissioners, against their own judgment, felt themselves bound to follow the opinion of Chitty, J., in that case. Macnaghten, J., however, and the majority of the Court of Appeal (Lord Greene, M.R., dissenting) took a contrary view. In both cases the decision turned upon the second point. Neither tribunal decided the first, though it is obviously important, and, as I understand, in the view of the majority of your Lordships, is determinative of the present case in favour of the Respondents.

As my noble and learned friend Lord Simonds points out, it is curious how scanty the authority is for the proposition that political objects are not charitable, and the only case quoted by Lord Parker, in *Bowman's* case ([1917] A.C. 406), namely, *De Themmines* v. *De Bonneval,* 5 Russ. 288, turned upon public policy, not upon what, apart from that question, is or is not a charity.

Moreover, the illustrations given by Lord Parker, at page 442, of the political matters which he had in mind, namely: " The abolition of religious " tests, the disestablishment of the Church, the secularization of education, the " alteration of the law touching religion or marriage, or the observation of the " Sabbath ", are, I think, primarily matters which could not be effected without an alteration of the law. The object in each case is to do away with a positive injunction to which an end can only be put by repealing the law; an Act of Parliament is required in order to do so. An example may be taken from the first illustration given by Lord Parker. No agreement come to by individuals or groups could dispense with the obligation of complying with the provisions of the Test Acts, whereas slavery or vivisection could be put an end to without disobedience to the law if all members of the community could be induced to desist from these practices. It is in the narrower sense in which I think the phrase " purely political objects " is rightly used, that is, as applicable to objects whose only means of attainment is a change in the law.

I cannot accept the view that the anti-slavery campaign, or the enactment of the Factory Acts, or the abolition of the use of boy labour to sweep chimneys, would be charitable so long as the supporters of these objects had not in mind, or at any rate did not advocate, a change in the laws, but became political and therefore non-charitable if they did so. To take such a view would to me be to neglect substance for form. The object was to stop slavery, or the use of boy chimney-sweeps, and to ensure that certain minimum requirements were carried out in factories. All this could be done by common consent, though no doubt the only effective method would be to alter the law. But persuasion not force was a possible means of effecting the desired purpose.

So, in the case of members of the Anti-Vivisection Society, a conceivable, though a very unlikely, way of effecting its purpose would be to persuade mankind to cease from experiments on animals, and it is possible that its members would prefer success by that means, though I have no doubt they would frankly admit that they saw no possibility of such an event. They would not, however, be asking anyone to break the law by refraining from vivisection. Their primary object, as I see it, is to prevent animal suffering caused by vivisection, though a main method of effecting that end is to repeal the present Act, and such repeal is in that sense a main object of the Society. As the Commissioners say: " We are satisfied that the main object of the " Society is the total abolition of vivisection . . . and (for that purpose) the

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"repeal of the Cruelty to Animals Act, 1876, and the substitution of a new "enactment prohibiting vivisection altogether." And again: "We agree "that the alteration of the law by means of legislation is a main purpose of the "Society".

In so far as the decision of Rowlatt, J., in *Commissioners of Inland Revenue* v. *Temperance Council,* 42 T.L.R. 618 (10 T.C. 748), is inconsistent with this view, I do not agree with it, though a distinction might be made between that case and this inasmuch as there legislation is put in the forefront of objects of the Council, and some support for this view may perhaps be gained from the decision in In re *Hood,* [1931] 1 Ch. 240. Moreover, as the Commissioners point out, this point was as open and as valid in In re *Foveaux*(1) as in this case, and yet it was never taken.

For these reasons, which perhaps differ a little from those presented by the Master of the Rolls, I agree with his view upon this point, and inasmuch as none of the other members of the Courts below dealt with it, I do not find myself at variance with any of their expressed views.

In the second point the Respondents say that the object, if it is to be charitable, must, like any other charitable object, be for the benefit of the public; the Commissioners have held that "on balance, the object of the "Society, so far from being for the public benefit, is gravely injurious "thereto"; and that that finding was one of fact and conclusive of the case as against the Appellants.

The Appellants on their part maintain that trusts inculcating humanity towards animals are (as has frequently been held) for the public benefit, and that it is not for the Commissioners or a Court to enter into what may be fine distinctions as to the question of the quantum of benefit as opposed to the disadvantages. The conflict, as I see it, is between the view held by Chitty, J., in In re *Foveaux,* and the criticisms or suggested criticisms of that view to be found in the judgment of Russell, J., as he then was, in In re *Hummeltenberg*(2) and the Court of Appeal, of whom Russell, L.J., formed one, in In re *Grove-Grady,* [1929] 1 Ch. 557.

Any observation of that learned Judge, whether in the Court of first instance or the Court of Appeal or in your Lordships' House, even though not strictly an essential part of his decision, could only be differed from with great diffidence, and it is therefore necessary to consider their exact bearing in the cases in which they are found.

One thing is certain, and was not contested by Mr. Grant, the intention of the donor in making the gift cannot affect the result. The question must be judged independently of his idea of what is or is not charitable, but undoubtedly, as has been pointed out more than once, a gift for the protection of animals is, *prima facie* at any rate, a good charitable gift. It is enough in this connection to refer to the observations of Swinfen Eady, L.J., in In re *Wedgwood,* [1915] 1 Ch. 113, at page 122.

Such a gift, then, being *prima facie* charitable, must remain charitable unless its charitable nature is taken away because on the whole it does more harm than good in the eyes of some tribunal authorised to determine that question. Chitty, J., as I understand him, said in In re *Foveaux*(3) that that question was not one which the tribunal of fact was entitled to decide. The Court or the Commissioners, as the case may be, were authorised to determine whether the object was one of a class which was or had been held to be charitable, that is, whether it was one of a class which *prima facie* benefited the

(1) [1895] 2 Ch. 501. (2) [1923] 1 Ch. 237. (3) [1895] 2 Ch. 501, at p. 503.

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public. After that the tribunal remained neutral. It was not for it, in a conflict of opposed opinions, to analyse further the beneficial or injurious results of the gift.

*Foveaux's* case(1) has more than once been quoted since its decision, and apparently accepted without criticism, except in so far as Lord Russell can be said to disapprove of it, and save for such qualifications of the acceptance of its doctrine as may have been implied in the earlier case of In re *Douglas* (1887), 35 Ch.D. 472. In In re *Wedgwood*(2) it appears to have been accepted without comment by Kennedy and Swinfen Eady, L.JJ.; and Lord Hanworth, M.R., cites it without criticism in In re *Grove-Grady*(3).

Moreover, its principle does, I think, receive support from such a case as *Attorney-General* v. *Marchant*, L.R. 3 Eq. 424. It is quite true that in that case Kindersley, V.-C., refused to increase a gift of doles proportionately with the increase he granted to a number of other charitable objects, on the ground that doles, though for the relief of poverty, were harmful rather than beneficial. But he acted in this way only with regard to accretions to the original gifts, on the ground that the Court had a discretion, where the original gift has been unexpectedly augmented, to add or not to add to the sum originally given to any one of the different objects. The original gift itself presumably was just as harmful as the accretion would have been, but that portion of the dole he did not, and indeed it was not suggested that he could, touch.

In re *Campden Charities*, 18 Ch.D. 310, also turned upon the discretion which the Court was given of varying the objects of a charity, where, but only where, a scheme was settled *cy-près* by the Charity Commissioners as a result of a complete change in the character of the neighbourhood and in the value of the gift. The judgment deprecated the giving and denied the benefit to be obtained from doles, but nowhere said or attempted to say that to give them would not be a good charity. All it decided was that where the Court was bound to administer the funds *cy-près* it had a discretion as to the object to be included in the scheme and was under no obligation to perpetuate doles.

There remains for consideration Lord Russell's two warnings. In *Hummeltenberg's* case(4) he was discussing the question whether the intention of the giver plays any part in making the object charitable or not, and decides that it has no effect, and adds: "In my opinion the question whether a gift "is or may be operative for the public benefit is a question to be answered by "the Court by forming an opinion upon the evidence before it." It will be observed that the opinion which the Court has to form is as to whether the gift is or may be for the benefit of the public, not as to whether on the balance of evidence the scale inclines one way or the other. If the latter were the true meaning, I do not know why the words "or may be" were added. The phraseology is at least capable of the interpretation that the Court has to determine whether the gift comes within the category of things beneficial to the public, not whether on balance the tribunal holds that the disadvantages attached to it outweigh its benefits.

In re *Grove-Grady* ([1929] 1 Ch. 557) was concerned with this very point, namely, was the gift in question within that class which could be held to be a charity? The Court of Appeal, differing from Romer, J., held by a majority that it could not, because there was no benefit to the community in a devise to form a reserve for animals of all kinds, wild or tame, free from the interference of man and with no provision even for his observation of the result—see page 572. Lord Hanworth, M.R., after citing the language of Russell, J., in In re *Hummeltenberg*, follows In re *Wedgwood* in quoting the words of

(1) [1895] 2 Ch. 501. (2) [1915] 1 Ch. 113. (3) [1929] 1 Ch. 557.
(4) [1923] 1 Ch. 237, at p. 242.

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FitzGibbon, L.J., in In re *Cranston,* [1898] 1 I.R. 431, at page 446: "Any gift "which proceeds from a philanthropic or benevolent motive, and which is "intended to benefit an appreciably important class of our fellow-creatures "(including, under decided cases, animals), and which will confer the supposed "benefit without contravening law or morals, will be 'charitable'"; and adopts the views of Kennedy and Swinfen Eady, L.JJ., in the former case. The statement of FitzGibbon, L.J., undoubtedly requires qualification in that it appears to make the intention of the donor the deciding factor, and fails to point out that it is the stimulation of humane and generous sentiments in man and not the protection of animals *per se* which is important, but this fact does not affect the view adopted by Lord Hanworth, M.R. Russell, L.J., however, at page 582, contemplates the possibility of anti-vivisection societies being removed from the class of charities in the light, as he says, of later knowledge in regard to the benefits accruing to mankind from vivisection.

In answer to this suggestion it is immaterial to consider the evidence which Chitty, J., had before him in In re *Foveaux*(1) since the principle which he adopts is not that he is constrained by the evidence to hold the society charitable when he came to weigh the advantages of vivisection against the benefits to be obtained by a crusade against it. Russell, L.J., on the contrary, appears to take the view that the case for and against the benefits to be conferred is to be decided by some tribunal which shall determine whether the humane and generous sentiments exhibited in a desire to save animals from suffering may not be outweighed by the benefits conferred by inflicting it.

I find it difficult to accept the view that, once an object has been held to be included in the class of charities, it is then for the Court to hear the evidence of witnesses on the one side and on the other as to whether it is in fact beneficial. I can imagine the severest contest between two sets of witnesses in the case of a gift for a religious purpose, the one saying that it is most beneficial and the other that it is very harmful. Is the tribunal to make up its mind between these two views, whether on balance the gift is beneficial to the community or not? Yet if the argument be that the tribunal is to make up its mind on the evidence called before it, I cannot see where it can stop short of determining the matter on the ordinary principles upon which Courts act in deciding upon a conflict of evidence, nor can I see any method of determining what preponderance of weight is to incline the scale sufficiently to one side or the other.

This view is, I think, in accordance with the opinion of Sir John Romilly, M.R., in *Thornton* v. *Howe,* 31 Beav. 14 (the *Joanna Southcote* case), when he says (*inter alia*): "If the tendency were not immoral, and although this "Court might consider the opinions sought to be propagated foolish or even "devoid of foundation, it would not, on that account . . . take it out of the "class of legacies which are included in the general terms charitable bequests."

Undoubtedly the object must not be a mere fad or contrary to public policy, but no argument against the claim of the Society was presented to your Lordships on either of these points, and fads can be dealt with by the method suggested by Kennedy, L.J., in In re *Wedgwood*(2).

In my view the object of this Society is the protection of animals from the sufferings believed to be involved in vivisection; that object is, in accordance with the decisions in what may be called the "animal" cases, charitable, and does not cease to be charitable in spite of the finding of the Commissioners that its success would be gravely injurious to the public benefit.

For these reasons, which are substantially those expressed by Lord Greene, M.R., as well as because I do not think the objects of the Society are political

(1) [1895] 2 Ch. 501. (2) [1915] 1 Ch., at p. 121.

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in the sense which would prevent them being charitable, I should allow the appeal.

**Lord Simonds.**—My Lords, the question raised in this appeal is whether the National Anti-Vivisection Society, which I will call "the Society", is a body of persons established for charitable purposes only within the meaning of Section 37 of the Income Tax Act, 1918, and accordingly entitled to exemption from Income Tax upon the income of its investments.

The Commissioners for the Special Purposes of the Income Tax Acts, thinking that they were bound by authority so to do, answered this question in the affirmative. From their decision the Commissioners of Inland Revenue appealed to Macnaghten, J., who reversed it, holding that the Society is not a body of persons established for charitable purposes only. His judgment was upheld by the Court of Appeal (MacKinnon and Tucker, L.JJ., Lord Greene, M.R., dissenting). Hence the appeal of the Society to this House.

I think that it is important to set out the decision contained in the Case stated by the Commissioners. It is amply supported by the findings of fact which therein appear. The material parts of the decision are as follows: "The "object of the Society, as set out in its book of rules, is stated to be: 'To "'awaken the conscience of mankind to the iniquity of torturing animals for "'any purpose whatever; to draw public attention to the impossibility of any "'adequate protection from torture being afforded to animals under the present "'law; and so to lead the people of this country to call upon Parliament totally "'to suppress the practice of vivisection.' An explanatory resolution was "passed by the council of the Society on 9th February, 1898, in the follow-"ing terms:—'The Council affirm that, while the demand for the total "'abolition of vivisection will ever remain the object of the National Anti-"'Vivisection Society, the Society is not thereby precluded from making "'efforts in Parliament for Lesser Measures, having for their object the saving "'of animals from scientific torture.' The quotations set out above are taken "from the book of rules of the Society as reprinted in 1938. We are satisfied "that the main object of the Society is the total abolition of vivisection, "including in that term all experiments on living animals whether calculated "to inflict pain or not, and (for that purpose) the repeal of the Cruelty to "Animals Act, 1876, and the substitution of a new enactment prohibiting "vivisection altogether. Dr. Fielding-Ould in his evidence before us sug-"gested that there were some experiments on living animals to which the "Society did not object and that the Society was only opposed to such experi-"ments as caused pain and suffering to the animals, but we find it difficult "to reconcile this evidence with the statements contained in the literature "produced by the Society, or indeed with the speeches of Dr. Fielding-Ould, "as reported in 'The Animals' Defender', a paper of which he is the editor. "We are satisfied that the members of the Society are actuated by an intense "love of animals, and that the work of the Society is to a large extent directed "towards the prevention of cruelty to animals. Part of its propaganda "literature is directed towards inculcating a love of animals in the young. A "number of very distinguished men were called as witnesses by the Crown "with the object of proving the great benefits which had accrued to the public "by reason of the medical and scientific knowledge which had been obtained "through experiments on living animals. We think it has been proved con-"clusively that:—(*a*) a large amount of present day medical and scientific "knowledge is due to experiments on living animals; (*b*) many valuable "cures for and preventatives of disease have been discovered and perfected "by means of experiments on living animals, and much suffering both to "human beings and to animals has been either prevented or alleviated thereby. "We are satisfied that if experiments on living animals were to be forbidden

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" (i.e., if vivisection were abolished) a very serious obstacle would be placed in " the way of obtaining further medical and scientific knowledge calculated to " be of benefit to the public. We were very impressed by the evidence of " Major-General Poole, Director of Pathology at the War Office, as to the " great value of experiments on living animals in connection with the successful " carrying on of the present war by the maintenance of the health of the " troops and the avoidance or minimising of many diseases to which soldiers " in the field are particularly liable. There was no express evidence before " us that any public benefit in the direction of the advancement of morals and " education amongst men (or in any other direction) would or might result " from the Society's efforts to abolish vivisection, but if it must be assumed " that some such benefit would or might so result, and if we conceived it to be " our function to determine the case on the footing of weighing against that " assumed benefit the evidence given before us, and of forming a conclusion " whether, on balance, the object of the Society was for the public benefit, we " should hold, on that evidence, that any assumed public benefit in the " direction of the advancement of morals and education was far outweighed " by the detriment to medical science and research and consequently to the " public health which would result if the Society succeeded in achieving its " object, and that, on balance, the object of the Society, so far from being for " the public benefit, was gravely injurious thereto, with the result that the " Society could not be regarded as a charity. But, upon the authorities, we " regard ourselves as precluded from so holding." The Commissioners then referred to the authorities, which it will be my task to examine, and came to the conclusion which I have already stated.

Before I refer to the cases and to the judgments in the Courts below I will state the two questions which appear to me to be raised in this appeal.

The first and shorter point is whether a main purpose of the Society is of such a political character that the Court cannot regard it as charitable. To this point little attention was directed in the Courts below. It is mentioned only in the judgment of the learned Master of the Rolls. As will appear in the course of this opinion, it is worthy of more serious debate.

The second point is fundamental. It is at the very root of the law of charity as administered by the Court of Chancery and its successor, the Chancery Division of the High Court of Justice. It is whether the Court, for the purpose of determining whether the object of the Society is charitable, may disregard the finding of fact that " any assumed public benefit in the direction " of the advancement of morals and education was far outweighed by the " detriment to medical science and research and consequently to the public " health which would result if the Society succeeded in achieving its object, " and that, on balance, the object of the Society, so far from being for the " public benefit, was gravely injurious thereto ". The Society says that the Court must disregard this fact, arguing that evidence of disadvantages or evils which would or might result from the stopping of vivisection is irrelevant and inadmissible.

My Lords, upon the first point the learned Master of the Rolls cites in his judgment[1] a passage from the speech of Lord Parker in *Bowman* v. *Secular Society, Ltd.*, [1917] A.C. 406, at page 442: " A trust for the attainment of " political objects has always been held invalid, not because it is illegal . . . " but because the Court has no means of judging whether a proposed change " in the law will or will not be for the public benefit ". Lord Parker is here considering the possibility of a valid charitable trust and nothing else, and when he

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(1) *See* page 345 *ante*.

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says "has always been held invalid" he means "has always been held not to be "a valid charitable trust." The learned Master of the Rolls found this authoritative statement, upon a branch of the law with which no one was more familiar than Lord Parker, to be inapplicable to the present case for two reasons, first, because he felt difficulty in applying the words to " a change in " the law which is, in common parlance, a ' non-political ' question ", and secondly, because he thought they could not in any case apply when the desired legislation is " merely ancillary to the attainment of what is, *ex* " *hypothesi*, a good charitable object."

My Lords, if I may deal with this second reason first, I cannot agree that in this case an alteration in the law is merely ancillary to the attainment of a good charitable object. In a sense no doubt, since legislation is not an end in itself, every law may be regarded as ancillary to the object which its provisions are intended to achieve. But that is not the sense in which it is said that a society has a political object. Here the finding of the Commissioners is itself conclusive. " We are satisfied ", they say, " that the main object of the " Society is the total abolition of vivisection . . . and (for that purpose) the " repeal of the Cruelty to Animals Act, 1876, and the substitution of a new " enactment prohibiting vivisection altogether." This is a finding that the main purpose of the Society is the compulsory abolition of vivisection by Act of Parliament. What else can it mean? And how else can it be supposed that vivisection is to be abolished? Abolition and suppression are words that connote some form of compulsion. It can only be by Act of Parliament that that element can be supplied. Upon this point I must with respect differ both from the learned Master of the Rolls and from Chitty, J., whose decision in In re *Foveaux*(1) I shall consider later.

Coming to the conclusion that it is a main object, if not the main object, of the Society, to obtain an alteration of the law, I ask whether that can be a charitable object, even if its purposes might otherwise be regarded as charitable.

My Lords, I see no reason for supposing that Lord Parker in the cited passage used the expression " political objects " in any narrow sense, or was confining it to objects of acute political controversy. On the contrary he was, I think, propounding familiar doctrine, nowhere better stated than in a text book, which has long been regarded as of high authority but appears not to have been cited for this purpose to the Courts below (as it certainly was not to your Lordships), Tyssen on Charitable Bequests. The passage, which is at page 176, is worth repeating at length: " It is a common practice for a number " of individuals amongst us to form an association for promoting some change " in the law, and it is worth our while to consider the effect of a gift to such an " association. It is clear that such an association is not of a charitable nature. " However desirable the change may really be, the law could not stultify itself " by holding that it was for the public benefit that the law itself should be " changed. Each Court in deciding on the validity of a gift must decide on " the principle that the law is right as it stands. On the other hand such a " gift could not be held void for illegality." Lord Parker uses slightly different language but means the same thing, when he says that the Court has no means of judging whether a proposed change in the law will or will not be for the public benefit. It is not for the Court to judge and the Court has no means of judging.

The same question may be looked at from a slightly different angle. One of the tests, and a crucial test, whether a trust is charitable lies in the competence of the Court to control and reform it. I would remind your Lordships that it is the King as *parens patriae* who is the guardian of charity, and that it is the

(1) [1895] 2 Ch. 501.

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right and duty of his Attorney-General to intervene and to inform the Court if the trustees of a charitable trust fall short of their duty. So too it is his duty to assist the Court, if need be, in the formulation of a scheme for the execution of a charitable trust. But, my Lords, is it for a moment to be supposed that it is the function of the Attorney-General on behalf of the Crown to intervene and demand that a trust shall be established and administered by the Court, the object of which is to alter the law in a manner highly prejudicial, as he and His Majesty's Government may think, to the welfare of the State? This very case would serve as an example, if upon the footing that it was a charitable trust it became the duty of the Attorney-General on account of its maladministration to intervene.

There is undoubtedly a paucity of judicial authority on this point. It may fairly be said that *De Themmines* v. *De Bonneval,* 5 Russ. 288, to which Lord Parker referred in *Bowman's* case[1], turned on the fact that the trust there in question was held to be against public policy. In *Commissioners of Inland Revenue* v. *Temperance Council,* 42 T.L.R. 618 (10 T.C. 748), the principle was clearly recognised by Rowlatt, J., as it was in In re *Hood,* [1931] 1 Ch. 240, at pages 250 and 252. But in truth the reason of the thing appears to me so clear that I neither expect nor require much authority. I conclude upon this part of the case that a main object of the Society is political, and for that reason the Society is not established for charitable purposes only.

I would only add that I would reserve my opinion upon the hypothetical example of a private enabling Act, which was suggested in the course of the argument. I do not regard In re *Villers-Wilkes,* 72 L.T. 323, as a decision that a legacy which had for its main purpose the passing of such an Act is charitable.

The second question raised in this appeal, which I have already tried to formulate, is of wider importance, and I must say at once that I cannot reconcile it with my conception of a Court of Equity that it should take under its care and administer a trust, however well-intentioned its creator, of which the consequence would be calamitous to the community.

I would not weary your Lordships with a historical excursion into the origin of the equitable jurisdiction in matters of charity, one of the " heads of " equity " as Lord Macnaghten called it in *Pemsel's* case[2]. Undoubtedly the favour shown by the civil law to gifts *in pios usus* had some part in it. So too had the conception, to which I have already referred, that the King as *parens patriae* took under his special care charitable gifts as he took also infants and lunatics. But, whatever its origin, from the fact of its existence arose the necessity of definition. And so both before and after the Statute of 43 Elizabeth it became the duty of the Court of Chancery to determine what objects were and what were not charitable.

I will refer to Tyssen again, at page 5. " One by one ", he says, " the " question of the validity of such trusts was brought before the Court of " Chancery. . . . It considered only this. Having regard to all legislative " enactments, and general legal principles, is it or is it not for the public " benefit that property should be devoted for ever to fulfilling the purpose " named? If the Court considered that it was not for the public benefit, it " held the trust altogether void . . . ". The learned author proceeds to illustrate his statement by reference to various trusts which the Court held to be invalid, as trusts to say masses for the donor's soul; to keep in repair a tomb outside a church, or to teach religious opinions for which penalties were inflicted by statute.

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(1) [1917] A.C., at p. 442. (2) 3 T.C. 53.

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The task of the Court was in some degree simplified by the Statute of Elizabeth, which made it clear that at least the purposes enumerated in the preamble were charitable, but from the beginning it appears to have been assumed that the enumeration was not exhaustive and that those purposes also were charitable which could be fairly regarded as within its spirit and intendment. This view enabled the Court to extend its protection to a vast number of objects which appeared both to the charitable donor and to it to be for the benefit of the community. Nowhere perhaps did the favour shown by the law to charities exhibit itself more clearly than in the development of the doctrine of general charitable intention, under which the Court, finding in a bequest (often, as I humbly think, on a flimsy pretext) a general charitable intention, disregarded the fact that the named object was against the policy of the law and applied the bequest to some other charitable purpose. Thus, in *Da Costa* v. *De Pas,* 1 Amb. 228, Lord Hardwicke applied a bequest for instructing the people in the Jewish religion (then regarded as an illegal purpose) for the benefit of the Foundling Hospital, and in *Cary* v. *Abbot,* 7 Ves. 490, Sir William Grant, M.R., directed that the residue of an estate, which had been bequeathed for the instruction of children in the Roman Catholic faith, should be applied as the King by sign manual should direct. I refer to this doctrine in a brief review of the equitable jurisdiction only because, as I think, it has been the cause of some confusion in the argument which has been presented to the House. It would be very relevant if the Society, conceding that the campaign against vivisection was not a charitable purpose, argued that there was yet a general charitable intention and that its funds were applicable to some other charitable purpose. That is not the argument. If it were I should not entertain it, though it might in an earlier age have succeeded.

My Lords, this then being the position, that the Court determined " one by " one " whether particular named purposes were charitable, applying always the overriding test whether the purpose was for the public benefit, and that the King as *parens patriae* intervened *pro bono publico* for the protection of charities, what room is there for the doctrine which has found favour with the learned Master of the Rolls, and has been so vigorously supported at the Bar of the House, that the Court may disregard the evils that will ensue from the achievement by the Society of its ends? It is to me a strange and bewildering idea that the Court must look so far and no farther, must see a charitable purpose in the intention of the Society to benefit animals and thus elevate the moral character of men but must shut its eyes to the injurious results to the whole human and animal creation.

I will readily concede that, if the purpose is within one of the heads of charity forming the first three classes in the classification which Lord Macnaghten borrowed from Sir Samuel Romilly's argument in *Morice* v. *Bishop of Durham,* 10 Ves. 522, the Court will easily conclude that it is a charitable purpose. But even here, to give the purpose the name of "religious" or " educational " is not to conclude the matter. It may yet not be charitable if the religious purpose is illegal or the educational purpose is contrary to public policy. Still there remains the overriding question. Is it *pro bono publico*? It would be another strange misreading of Lord Macnaghten's speech in *Pemsel's* case[1] (one was pointed out in In re *Macduff*[2]) to suggest that he intended anything to the contrary. I would rather say that when a purpose appears broadly to fall within one of the familiar categories of charity the Court will assume it to be for the benefit of the community, and therefore charitable, unless the contrary is shown, and further that the Court will not be astute in such a case to defeat upon doubtful evidence the avowed benevolent intention of a donor.

(1) 3 T.C. 53. (2) [1896] 2 Ch. 451.

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But, my Lords, the next step is one that I cannot take. Where upon the evidence before it the Court concludes that, however well-intentioned the donor, the achievement of his object will be greatly to the public disadvantage, there can be no justification for saying that it is a charitable object. If and so far as there is any judicial decision to the contrary, it must, in my opinion, be regarded as inconsistent with principle and be overruled. This proposition is clearly stated by Russell, J., in In re *Hummeltenberg,* [1923] 1 Ch. 237, at page 242. " In my opinion ", he said, " the question whether a gift is or " may be operative for the public benefit is a question to be answered by the " Court by forming an opinion upon the evidence before it." This statement of that very learned Judge follows immediately upon some observations on the cases of In re *Foveaux,* [1895] 2 Ch. 501, and In re *Cranston,* [1898] 1 I.R. 431, which were the mainstay of the appellant's argument.

In In re *Foveaux* a testatrix had bequeathed legacies to two societies described briefly by Chitty, J., as " the two defendant anti-vivisection " societies ", one of them being the Appellant Society under the name which it then bore. The question as stated by the learned Judge was whether they were charities in the technical sense in which the term " charity " is used in law. That is the same question as that which your Lordships have to decide here. Chitty, J., decided that they were charities. His judgment concludes with these words ([1895] 2 Ch., at page 507): "The purpose of these societies, " whether they are right or wrong in the opinions they hold, is charitable in " the legal sense of the term. The intention is to benefit the community; " whether, if they achieved their object, the community would, in fact, be " benefited is a question on which I think the Court is not required to express " an opinion. The defendant societies may be near the border line, but I " think they are charities." These words, which appear to me to be in direct opposition to the passage that I have cited from the judgment of Russell, J., in effect repeat what Chitty, J., said earlier in his judgment (at page 503): " In determining this question of charity the Court does not enter into or " pronounce any opinion on the merits of the controversy which subsists " between the supporters and opponents of the practice of vivisection. It " stands neutral."

My Lords, in the passages that I have cited from the judgments of Chitty, J., and Russell, J., the issue is clear cut. Which of them is right? Your Lordships will now see why I have thought it proper, however briefly, to consider the origin of this equitable jurisdiction. For at once this question arises. If indeed Chitty, J., is right, if it is not the duty of the Court to express an opinion whether the community will in fact be benefited, should the object of those who intend to benefit it be achieved, at what point in its long history did it cease to be its duty? One by one the purposes enumerated in the preamble to the Statute of Elizabeth were held to be charitable by a Court which performed just this duty and applied this overriding test. And since the Statute the Court has performed the same duty in determining whether objects alleged to be charitable are within the spirit and intendment of the preamble. May I not cite Chitty, J., himself in this very case? " After all ", he said (at page 504), " the best that can be done is to consider each case as it " arises, upon its own special circumstances." Is there a more special circumstance than this, that the fact is proved that " on balance, the object of the " Society, so far from being for the public benefit, was gravely injurious " thereto "? Nor do I understand why in his concluding words Chitty, J., said that the defendant societies might be near the border line, if he looked only at their intention and formed no opinion upon the result of their efforts if they were successful. For there could be no doubt upon the authority of such cases as *University of London* v. *Yarrow,* 1 De G. & J. 72, and *Marsh* v.

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*Means,* 3 Jur. (N. S.) 790, that a gift for the protection of animals is *prima facie* a charitable gift for the reason later stated by Swinfen Eady, L.J., in In re *Wedgwood,* [1915] 1 Ch. 113, at page 122. Upon this line of authority Chitty, J., founded his judgment and, if intention only was looked at, the defendant societies could fairly claim to be in the heart of the province of charity. If the learned Judge had a doubt, it could only have been due to the passing thought that perhaps result as well as intention was material. It is worthy of notice that the same doubt, so strong indeed that final opinion was reserved, was entertained by Cotton, Lindley and Bowen, L.JJ., in In re *Douglas,* 35 Ch.D. 472. In that case it was unnecessary to determine whether the same anti-vivisection society in its then form was a charity. But the learned Lords Justices expressly reserved their opinion upon the point. I see no reason why they should have done so, unless they held, as I invite your Lordships to hold, that injury to the community must be weighed with the ostensible charitable purpose of the Society.

The learned Master of the Rolls, from whose opinion, upon a broad question of principle such as this is, I differ with great reluctance, supports his decision by reference to such cases as *Attorney-General* v. *Marchant,* L.R. 3 Eq. 424, and In re *Campden Charities,* 18 Ch.D. 310. In the former case a testator had, in the year 1640, left real estate upon trust to pay £50 per annum to four charitable objects, namely, £20 for the salary of a schoolmaster, £20 to a college for the purchase of books, and £5 each to the poor of two parishes with a direction that any deficiency should be borne rateably. It appears to have been assumed that any excess of the rents and profits of the real estate over £50 was applicable for charitable purposes. There was in fact a substantial surplus, and the question submitted to the Court was whether it should be divided rateably between the charities named in the will, or should be appropriated for the benefit of one or more of them to the exclusion of the others. Kindersley, V.-C., after referring to the rule of law laid down by Lord Kingsdown in *Attorney-General* v. *Dean and Canons of Windsor,* 8 H.L. Cas. 369, at page 452, that the accretion was *prima facie* to be applied and apportioned *pro rata* among the objects of the testator's bounty, but subject to the discretion of the Court to be exercised in certain cases and within certain limits, thus expressed himself (at page 430): " So, I apprehend, if it should appear " that the directions of the testator with respect to a particular object, if carried " out in these days, so far from being beneficial, would be detrimental to the " objects he meant to benefit: in that case a good reason would exist for " exercising the discretion." Then he applies this principle to the gifts to the poor of the two parishes, and says (at page 431): " I think, by common " consent, it is established at the present day that there is nothing more " detrimental to a parish, and especially to the poor inhabitants of it, than " having stated sums periodically payable to the poor of that parish by way of " charity. The poorest class of all is not allowed to participate in such " charities, because the Court, in such cases, always excludes those who are in " receipt of parochial relief, inasmuch as that would be a relief to the poor " rates, and so a charity to the ratepayers and not to the poor. The only " effect of such gifts is to pauperize the parish . . . ".

Accordingly the Vice-Chancellor declined to increase *pro rata* the gifts to the poor, and directed that the whole of the surplus revenue should be divided between the other two objects of the testator's bounty. My Lords, I find in this decision nothing contradictory to the principles that I have asserted. A purpose deemed charitable in 1640 was no longer deemed charitable in 1866, therefore the Court declined to give effect to it in regard to surplus revenues. It does not follow from this that, if in 1640 the Court had thought that nothing could

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be more detrimental to a parish than such doles, it would nevertheless have supported the gift as a good charitable gift.

The case of In re *Campden Charities* (18 Ch.D. 310) is an authority of some importance in a difficult branch of the law of charity relating to the *cy-près* application of charitable funds and the jurisdiction of the Charity Commissioners, and it is often cited in that connection. Substantially the same question had arisen as in *Attorney-General* v. *Marchant*(1). There, too, a bequest had been made for the purchase of lands of the annual value of £10, half of which was to be applied towards the better relief of the most poor and needy people of good life and conversation in the parish of Kensington. The value of the lands so purchased had greatly increased, so had the parish of Kensington. It became necessary to establish a scheme for the administration of the charity, and the Charity Commissioners did so. Taking the view expressed by Kindersley,V.-C., that doles to the poor were detrimental to the parish, they in substance diverted to educational purposes a gift which was in part eleemosynary. The Court of Appeal held that they were entitled to do so. "The habits of society ", said Sir George Jessel, M.R., at page 324, " have " changed, and not only men's ideas have changed but men's practices have " changed, and in consequence of the change of ideas there has been a change " of legislation; laws have become obsolete or have been absolutely repealed, " and habits have become obsolete and have fallen into disuse which were " prevalent at the times when these wills were made ", and later, at page 327: " With our present ideas on the subject, and our present experience, which has " been gathered as the result of very careful inquiries by various committees " and commissions on the state of the poor in England, we know that the " extension of doles is simply the extension of mischief." Again, my Lords, I find nothing in this reasoning which is opposed to what I have said. If today a testator made a bequest for the relief of the poor and required that it should be carried out in one way only and the Court was satisfied by evidence that that way was injurious to the community, I should say that it was not a charitable gift, though three hundred years ago the Court might, upon different evidence or in the absence of any evidence, have come to a different conclusion. I have been careful to add the condition that the testator required the gift to be carried out in one way only. For I would again remind your Lordships how much confusion has been introduced by the doctrine of general charitable intention, which is itself the substantial justification of the *cy-près* doctrine.

The two cases to which I have last referred both fall within one of the three determinate categories in Lord Macnaghten's classifications, the relief of poverty. In a case which it is sought to bring within the indeterminate fourth category, it is, I think, even more difficult to pause at a certain stage in the enquiry, to say, for example, that the purpose is to protect animals, that kindness to animals is conducive to the moral advancement of man, and to conclude that the purpose is charitable without looking to the end of the matter.

Thus, in In re *Grove-Grady*, [1929] 1 Ch. 557, a testatrix left her residuary estate to trustees to found an institution which should have as one of its objects the acquisition of land for the provision of refuges for the preservation of " all " animals birds or other creatures not human ". The Court of Appeal by a majority held that the trust, not having been shown to be for purposes beneficial to the community, was not a good and valid charitable trust. It is instructive to see why not. Lord Hanworth, M.R., thus states the law. Having formulated the test in the two familiar questions: (1) Is the trust for a purpose beneficial to the community? (2) If it satisfies that first test, is it charitable?, he then asks (at page 572), " Who is to decide these questions?

(1) L. R. 3 Eq. 424.

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" I agree with Holmes, L.J., that the answer does not depend upon the view " entertained by any individual—' either by the judge who is to decide the " ' question, or by the person who makes the gift ': In re *Cranston*(1). The " test is to be applied from evidence of the benefit to be derived by the " public or a considerable section of it; though a wide divergence of opinion " may exist as to the expediency, or utility, of what is accepted generally as " beneficial. The Court must decide whether benefit to the community is " established." The learned Master of the Rolls then expressly approved the passage that I have cited from the judgment of Russell, J., in In re *Hummeltenberg*(2). The same view is reiterated by that learned Judge (Russell, L.J., as he then was) at page **588**: " In my opinion, the Court must " determine in each case whether the trusts are such that benefit to the " community must necessarily result from their execution."

Counsel for the Society sought to distinguish this case on the ground that the initial step was not there taken; there was not found to be any benefit to the community, so that no question arose of weighing advantage against disadvantage. In this view, presumably, however slight the benefit, the Court must disregard injury however great. Such a view is repellent alike to commonsense and to the principles upon which the equitable jurisdiction has been founded.

I ought not to let the case of In re *Cranston*, [1898] 1 I.R. 431, pass unnoticed. In that case the Court had to consider whether a bequest to two vegetarian societies was a good charitable bequest, and, though there was no such evidence of injury to the community arising from the activities of the societies as was adduced in this case, yet there were observations in the judgments of the very learned Judges who took part in the decision upon which Counsel for the Appellant properly relied. But they must not be pressed too far. Thus, when Sir Andrew Marshall Porter, M.R., (who first heard the case), felt bound " to give effect to the intention unless there is some coercive " reason to the contrary " (page **435**), it is at least open to doubt whether he would not have been coerced to a contrary view if he had found upon the evidence that injury to the community was the necessary result of the societies' work. It may indeed be said that even the possibility of a coercive reason to the contrary is fatal to the contention that the Court may not look to the end of the chapter. Lord Ashbourne, L.C., perhaps went further. For he observed (at page **445**) that though the vast majority might be opposed to it, and it might be disapproved by medical men, yet he did not feel at liberty to sit in judgment upon objects and purposes, or to measure the success which they might then have or might thereafter attain to. If by this the learned Lord Chancellor meant that it was not a matter for his individual opinion, I should not dissent, but I cannot accept it if he meant that the Court could abrogate its duty of deciding upon evidence whether the test of charitable purpose was satisfied. FitzGibbon, L.J., uses words which I think worth citing at length. " What ", he says (at page **446**), " is the tribunal which " is to decide whether the object is a beneficent one? It cannot be the individual " mind of a Judge, for he may disagree, *toto cœlo*, from the testator as to " what is or is not beneficial. On the other hand, it cannot be the *vox* " *populi*, for charities have been upheld for the benefit of insignificant sects, " and of peculiar people. It occurs to me that the answer must be—that the " benefit must be one which *the founder* believes to be of public advantage, " and his belief must be at least rational, and not contrary either to the " general law of the land, or to the principles of morality." Your Lordships see

(1) [1898] 1 I.R., at p.455. (2) [1923] 1 Ch., at p. 242.

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how inevitably some qualification slips in. Here we have the test of rationality, of conformity with the general law, of the principles of morality. These are tests which the Court must examine and, so far as they depend on facts, come to a conclusion upon relevant evidence. I do not understand FitzGibbon, L.J., to support the view of the Appellant that, given a measure of public advantage, the public disadvantage can be ignored. Walker, L.J., appears more strongly to favour the Appellant. " The idea ", he says (at page 451), " may be erroneous and may be visionary, but it was entertained " honestly by the giver, and her gift was designed for the benefit of mankind, " and I think it is charitable ". I can hardly think that the learned Lord Justice intended to say that the honest opinion of a donor is conclusive. At least an exception must be made in the case of an illegal purpose or a purpose contrary to public policy. The question here, with which he did not purport to deal, is whether it is as fatal to the charitable nature of a gift that it is shown specifically to be to the public detriment as that it is regarded generally as contrary to public policy. From the dissenting judgment of Holmes, L.J., your Lordships may get some assistance. That learned Lord Justice is careful to say that there is nothing illegal or contrary to public policy in the propagation of the doctrines of vegetarianism. The question remained whether the object of the societies was charitable, and after stating that the object must be one by which the public, or a section of the public, benefits, the Lord Justice proceeds (at page 454): " But what is the test or standard by which " a particular gift is to be tried with a view of ascertaining whether it is " beneficial in this sense? I am of opinion that it does not depend upon the " view entertained by any individual—either by the Judge who is to decide " the question, or by the person who makes the gift." And he answers the question by saying (at page 455): " There is probably no purpose that all " men would agree is beneficial to the community; but there are surely many " purposes which everyone would admit are generally so regarded, although " individuals differ as to their expediency or utility. The test or standard is, " I believe, to be found in this common understanding." He then applies this standard to the gift there in question, and, applying it, finds that the object does not benefit mankind and, therefore, is not charitable. It is, I think, instructive to see how he contrasts the vegetarian and the anti-vivisection claims. Of anti-vivisection he says (at page 458): " There is a " great body of well-informed opinion, holding that it would be for the true " interests of mankind to put an end to it " (i.e., vivisection) " altogether. " I think that there is no analogy between a practice such as this pursued " by only a few individuals, attended with the severest suffering, and pro- " ductive of very doubtful benefit, and the universal habit of killing animals " for human food in a manner that causes at the most but momentary pain." It may well be that if the finding of the Special Commissioners in this case had been in similar terms, I should accede to the Society's claim. But the value of the observations of the Lord Justice is that he looks first and last to the true interests of mankind. That is the test. Be the intention of the donor what it will, let him label his gift by what name he likes, he cannot draw a line and say to the Court that it shall go thus far and no farther.

My Lords, I have dealt at some length with the case of In re *Cranston*(1), partly because it was relied on by the Appellant, partly because it is, I think, one of the most important cases in this branch of the law of charity. I do not express any opinion whether it was rightly decided. Still less do I express an opinion whether, upon such evidence as might today be available, a similar

(1) [1898] 1 I.R. 431.

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conclusion would be reached. I use it for the purpose of emphasising a view, too often, I fear, reiterated, that the Court must still in every case determine by reference to its special circumstances whether or not a gift is charitable.

My Lords, what I have said is enough to conclude this case. But there is an important passage in the judgment of the Master of the Rolls which I ought not to ignore. " I do not see ", he says(1), " how at this time of day it can " be asserted that a particular exemplification of those objects is not beneficial " merely because in that particular case the achievement of those objects " would deprive mankind of certain consequential benefits, however important " those benefits may be. If this were not so, it would always be possible, " by adducing evidence which was not before the Court on the original " occasion, to attack the status of an established charitable object, to the great " confusion of trustees and all others concerned. Many existing charities " would no doubt fall if such a criterion were to be adopted." I venture, with great respect, to think that this confuses two things. A purpose regarded in one age as charitable may in another be regarded differently. I need not repeat what was said by Sir George Jessel, M.R., in In re *Campden Charities*(2). A bequest in the will of a testator dying in 1700 might be held valid upon the evidence then before the Court, but upon different evidence held invalid if he died in 1900. So, too, I conceive that an anti-vivisection society might at different times be differently regarded. But this is not to say that a charitable trust, when it has once been established, can ever fail. If by a change in social habits and needs or, it may be, by a change in the law, the purpose of an established charity becomes superfluous or even illegal, or if with increasing knowledge it appears that a purpose once thought beneficial is truly detrimental to the community, it is the duty of trustees of an established charity to apply to the Court, or in suitable cases to the Charity Commissioners, or in educational charities to the Minister of Education, and ask that a *cy-près* scheme may be established. And I can well conceive that there might be cases in which the Attorney-General would think it his duty to intervene to that end. A charity once established does not die, though its nature may be changed. But it is wholly consistent with this that in a later age the Court should decline to regard as charitable a purpose to which in an earlier age that quality would have been ascribed, with the result that (unless a general charitable intention could be found) a gift for that purpose would fail. I cannot share the apprehension of the Master of the Rolls that great confusion will be caused if the Court declines to be bound by the beliefs and knowledge of a past age in considering whether a particular purpose is today for the benefit of the community. But if it is so, then I say that it is the lesser of two evils.

My Lords, in a speech which I recently delivered in this House I had occasion to say that the cases decided on this branch of the law were legion in number and were not easy to reconcile. This is the first time, so far as I am aware, that the issue in the form in which I have endeavoured to state it has reached this House. If your Lordships are satisfied that the law as laid down by Russell, J. (as he then was), in In re *Hummeltenberg*(3) is correct, and the decision of this House confirms it, I believe that it will be a useful landmark in the history of the law of charity.

**Lord Normand.**—My Lords, the Appellant Society claims exemption from Income Tax on its investment income on the ground that it is a body of trustees established for charitable purposes only within the meaning of Section 37 of the Income Tax Act, 1918.

(1) *See* page 344 *ante*. (2) 18 Ch. D., at p. 324. (3) [1923] 1 Ch. 237.

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The trust purposes are to be found in resolutions passed by a general meeting of the Society held on 21st July, 1897, and by the council on 9th February, 1898. Of these resolutions the first declares that the object of the Society is to awaken the conscience of mankind to the iniquity of torturing animals for any purpose whatever; to draw public attention to the impossibility of any adequate protection from torture being afforded to animals under the present law, and so to lead the people of this country to call upon Parliament totally to suppress the practice of vivisection. By the second resolution, which is described as an explanatory resolution, the council affirmed that, while the demand for the total abolition of vivisection would ever remain the object of the National Anti-Vivisection Society, the Society was not thereby precluded from making efforts in Parliament for lesser measures having for their object the saving of animals from scientific torture.

The first question in the appeal is whether these purposes do not demonstrate that the Society is an association for political purposes and not an association or trust for charitable purposes.

The distinction between a political association and a charitable trust has not been defined, and I doubt whether it admits of precise definition. The Attorney-General, however, submitted that any association which included among its objects the passing by Parliament of any legislation, unless it were an uncontroversial enabling Act, was to be considered a political association, and must be refused the privileges which the law allows to charities. But no authority was cited which would warrant so extreme a proposition.

The formation of voluntary associations for the furtherance of the improvement of morals is familiar, and such associations are a well-recognised sub-division of the fourth of Lord Macnaghten's divisions of charity in *Pemsel's* case[1], [1891] A.C. 531, at page 583. It is also familiar that trusts for preventing cruelty to animals, or for improving the conditions of their lives, have found a recognised place in that sub-division. Trusts for the benefit of animals are allowed to be charitable because, to quote the language of Swinfen Eady, L.J., in In re *Wedgwood,* [1915] 1 Ch. 113, at page 122, they tend " to " promote and encourage kindness towards " animals, " to discourage cruelty, " and to ameliorate the condition of the brute creation, and thus to stimulate " humane and generous sentiments in man towards the lower animals, and by " these means promote feelings of humanity and morality generally, repress " brutality, and thus elevate the human race." Societies for the amelioration of the condition of animals, like other societies for the improvement of human morals, do not as a rule limit their activities to one particular method of advancing their cause. Commonly they hope to make voluntary converts, and they also hope to educate public opinion and so to bring its influence to bear on those who offend against a humane code of conduct towards animals. But they seldom disclaim and frequently avow an intention of inducing Parliament to pass new legislation if a favourable opportunity should arise of furthering their purpose by that means. A society for the prevention of cruelty to animals, for example, may include among its professed purposes amendments of the law dealing with field sports, or with the taking of eggs, or the like. Yet it would not, in my view, necessarily lose its right to be considered a charity, and if that right were questioned it would become the duty of the Court to decide whether the general purpose of the society was the improvement of morals by various lawful means, including new legislation, all such means being subsidiary to the general charitable purpose. If the Court answered this question in favour of the society, it would retain its privileges as a charity. But if the decision was that the leading purpose of

(1) 3 T.C. 53, at p. 96.

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the society was to promote legislation in order to bring about a change of policy towards field sports, or the protection of wild birds, it would follow that the society should be classified as an association with political objects and that it would lose its privileges as a charity. The problem is therefore to discover the general purposes of the Society and whether they are in the main political or in the main charitable. It is a question of degree of a sort well known to the Courts.

The Appellant Society is a society for the prevention of cruelty to animals, and it is not disputed that, by the vigilance of its members, it does much to prevent the infliction of cruelty on animals undergoing experiments. But it has chosen to restrict its attack upon cruelty to a narrow and peculiar field, and it has adopted as its leading purpose the suppression of vivisection by legislation. This is apparent from the resolutions which I have quoted. In the first of them the Society condemns the existing legislation as an insufficient protection against the torture of animals, and sets forth as its object the total suppression of vivisection by new legislation passed by Parliament under pressure from an enlightened people. By the second resolution the council affirms that the total abolition of vivisection remains the object of the Society, but intimates that lesser Parliamentary measures for the protection of animals from scientific torture will also be pursued by the Society. The Society seems to me to proclaim that its purpose is a legislative change of policy towards scientific experiments on animals, the consummation of which will be an Act prohibiting all such experiments. I regard it as clear that a society professing these purposes is a political association and not a charity. If for legislative changes a change by means of Government administration was substituted, the result would be the same.

In *Bowman* v. *Secular Society, Ltd.*, [1917] A.C. 406, at page 442, Lord Parker said that " a trust for the attainment of political objects has always " been held invalid, not because it is illegal . . . but because the Court has " no means of judging whether a proposed change in the law will or will not " be for the public benefit ". That was said in a case in which the society was advocating a very important change in the relations of the State and the community towards religion. I respectfully agree with the comment of Lord Greene, M.R., that Lord Parker's words do not apply when the legislation is merely ancillary to the attainment of what is, *ex hypothesi*, a good charitable object[1]. For the charitable purpose, being dominant, would prevail, as it did in *Commissioners of Inland Revenue* v. *Falkirk Temperance Café Trust*[2], 1927 S.C. 261, and in *Public Trustee* v. *Hood*, [1931] 1 Ch. 240, where it was held that, the main object of the gift being charitable, the gift was none the less valid because the testator had pointed out one of the means by which, in his opinion, the main object could best be attained and which in itself might not have been charitable if it had stood alone. But I regret that I cannot agree with the Master of the Rolls in limiting the scope of Lord Parker's words to matters of acute political controversy. Whether a project for new legislation excites acute political controversy may depend on the prudence and good management of the promoters. If they have patiently prepared the way by a gradual education of the public they may succeed in eliminating much of the opposition. But I cannot imagine that it is probable that a measure for the suppression of the kind of research which is impugned by this Society would pass without acute controversy. It excites little or no controversy at present because the immediate prospects of its success are negligible, but, if the efforts of the Society were to bring success near, acute and bitter controversy would, it is almost certain, become inevitable. But,

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(1) *See* page 345 *ante*. (2) 11 T.C. 353.

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in my opinion, it is not relevant to inquire whether the change of policy, for such it would be, represented by the prohibition of experiments on animals, might be accompanied by controversy or not. The relevant consideration is that it would be a change of policy, and that this Society makes the achievement of that change by legislation its leading purpose. That, in my opinion, settles the issue in this case. I think that the same reason explains the decision of *Commissioners of Inland Revenue* v. *Temperance Council of the Christian Churches of England and Wales*(1), 136 L.T. 27, and I adopt the words used of that case by Lawrence, L.J., in *Public Trustee* v. *Hood*, [1931] 1 Ch., at page 252: " In that case the gift was not for the promotion of " temperance generally, but was for the promotion of temperance mainly by " political means ". The Anti-Vivisection Society is similarly not a society for the prevention of cruelty to animals generally, but a society for the prevention of cruelty to animals by political means.

It would not, however, be right to pass by in silence the other question which occupied so much of the debate. This question, which in my opinion only arises on the assumption that the Appellant Society is held not to be a political body, is in brief whether it is sufficient for it to prove that its purpose is to alleviate or prevent the suffering of animals, or whether it must prove that, on balance, its purpose is beneficial to mankind. I confess that my opinion has wavered and that I was for a long time inclined to agree with the judgment of the Master of the Rolls. But after careful consideration of the speech of my noble and learned friend Lord Simonds, which I have had the advantage of reading in print, I have come to agree with it. I do not propose to attempt to add anything to what my noble and learned friend has said on this part of the case.

*Questions put:*

That the Order appealed from be reversed.

*The Not Contents have it.*

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

*The Contents have it.*

[Solicitors:—Shield & Son; Solicitor of Inland Revenue.]

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(1) 10 T.C. 748.

(83648) Wt. 4645/59 6/48 Hw.