COURT OF SESSION (FIRST DIVISION)—11TH, 12TH AND 19TH DECEMBER, 1951

HOUSE OF LORDS, 2ND, 3RD, 4TH FEBRUARY, AND 9TH MARCH, 1953

Commissioners of Inland Revenue

v.

City of Glasgow Police Athletic Association(1)

Income Tax—Exemption—Charitable purposes—Police Athletic Association—Finance Act, 1921 (11 & 12 *Geo.* V, *c.* 17), *Section* 30 (1) (*c*); *Finance Act,* 1927 (17 & 18 *Geo.* V, *c.* 10), *Section* 24.

The Association was formed in 1938 *" to encourage all forms of athletic sports and general pastimes". Membership of the Association is restricted to officers and ex-officers of the City of Glasgow Police Force and is voluntary.* 85 *per cent. of the members of the Force belong to it. The Association is administered by the members themselves, each member paying an annual subscription to the Association. Funds are also raised by holding an annual sports meeting.*

On appeal against the refusal by the Commissioners of Inland Revenue of a claim by the Association under Section 30 (1) (*c*), *Finance Act,* 1921, *as amended by Section* 24, *Finance Act,* 1927, *for exemption from Income Tax of the profits of the annual sports meeting, the Special Commissioners decided that, while the Association's object was not,* per se, *a charitable object, there were special factors in the nature of a police force which enabled them to hold that the Association was a body of persons established for charitable purposes only, and they allowed the claim. The Crown demanded a Case.*

The Court of Session held that the question whether the Association was established for charitable purposes had—see Special Commissioners of Income Tax *v.* Pemsel, 3 T.C. 53—*to be decided in accordance with English law, and the Court could not decide that the decision of the Special Commissioners was contrary to the law of England. The Crown's appeal was accordingly dismissed.*

The House of Lords held that the English law of charity had to be regarded for Income Tax purposes as part of the law of Scotland and not as a foreign law; and (Lord Oaksey dissenting) that the Association was not established for charitable purposes only.

CASE

Stated for the opinion of the Court of Session as the Court of Exchequer in Scotland by the Special Commissioners of Income Tax, under the Income Tax Act, 1918, Section 149, and the Finance Act, 1925, Section 19 (3).

I. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held at Glasgow on 6th April, 1951 for the purpose of hearing appeals the said Commissioners, pursuant to Section 19 (3) of

(1) Reported [1952] S.L.T. 136; 1952 S.C. 102; [1953] 1 All. E.R. 747; 97 S.J. 208; [1953] S.L.T. 105.

the Finance Act, 1925, heard and determined a claim by City of Glasgow Police Athletic Association (hereinafter called "the Association") for exemption under Section 30 (1) (*c*) of the Finance Act, 1921, as amended by Section 24 of the Finance Act, 1927, from Income Tax under Schedule D in respect of the profits of a trade, namely, the holding of annual sports, carried on by the Association. The grounds of the claim were that (*a*) the Association was a charity, as defined by Section 30 (3) of the Finance Act, 1921, namely "a body of persons or trust established for charitable purposes only," (*b*) the profits of the said trade were applied solely to the purposes of the Association and (*c*) both of the conditions of paragraph (*c*) of Subsection (1) of Section 30 of the Finance Act, 1921 (amended as aforesaid) were satisfied, namely, (*i*) the trade was exercised in the course of the actual carrying out of a primary purpose of the Association and (*ii*) the work in connection with the trade was mainly carried on by beneficiaries of the Association.

At the hearing of the said claim it was conceded on behalf of the Appellants (*a*) that the profits of the said trade were applied solely to the purposes of the Association and (*b*) that if the Association was a charity, as above defined (which was denied), the above condition (*ii*) was satisfied, namely the work in connection with the trade was mainly carried on by beneficiaries of the charity, with the result that the Association would be entitled to the exemption claimed, and the issue before us, the Commissioners, was accordingly confined to the question whether the Association was a body of persons or trust established for charitable purposes only.

II. Evidence in support of the claim was given before us by Mr. James Robertson (Assistant Chief Constable of Glasgow), Sergeant T. Gourlay (City of Glasgow Police, and honorary treasurer of the Association) and Detective Sergeant H. F. Thomson (City of Glasgow Police, and honorary general secretary of the Association), and the documents hereinafter mentioned were put in evidence before us. The facts found by us on the evidence (oral and documentary) are as hereinafter set out.

(1) Prior to 1938, there were various clubs connected with the City of Glasgow Police. In February, 1938, these clubs were merged in the Association which was established at that date with the purpose of co-ordinating the various athletic and sporting activities of the members of the police force.

A print of the membership card of the Association, containing the constitution and general rules of the Association is hereto annexed, marked "A," and forms part of this case(1).

Rule 1 provides that:

> "The Association shall be called the 'City of Glasgow Police Athletic Association.'"

Rule 2 provides that:

> "The objects of the Association shall be to encourage and promote all forms of athletic sports and general pastimes."

Rule 3 provides:

> "Officers.—The Officers shall consist of the following:—President, Vice-President, Hon. General Secretary and Hon. Treasurer, who shall be members of the Association. The Chief Constable shall be President and the Assistant Chief Constables and Superintendents of the Force shall be Vice-Presidents."

(1) Not included in the present print.

(The Rule then makes provision for the election of the hon. general secretary and the hon. treasurer.)

Rule 4 provides:

> "The Management of the Association shall be vested in an Executive Committee, Divisional activities by a Divisional Committee, and each branch of sport or pastime by a Sectional Committee. The composition of these Committees is as detailed in Rule 5. There shall be the following Sections, viz.:—Angling, Athletics, Badminton, Billiards, Bowls, Boxing and Wrestling, Cricket, Football, Golf, Rugby, Shooting, Swimming and such other sections as the Executive Committee may approve."

Rule 5 deals in detail with the constitution of the executive committee, divisional committees and sectional committees.

Rule 6 provides for the holding of an annual general meeting and the business to be transacted thereat.

Rule 7 deals with financial matters, generally.

Rule 8 provides:

> "Membership.—Ordinary membership shall be restricted to Officers and ex-Officers of the City of Glasgow Police Force."

Rule 9 provides:

> "Honorary Members—the Executive Committee may elect honorary members."

Rule 10 provides that the subscriptions for each serving member shall by 3*d.* per week, and that the subscription for ex-members of the Force shall be 5*s.* per annum.

Rule 11 provides:

> "Members to be Amateurs.—The members of the various clubs or sections of the Association must be amateurs as defined by the laws of the sport or pastime concerned."

Rules 12 to 20 provide for the various matters therein mentioned, and *Rule* 21 provides:

> "Alteration of Rules.—None of the foregoing Rules shall be altered or revoked save by a two-thirds majority of those present at the Annual General Meeting or at a Special Meeting called for the purpose."

Rule 22 makes provision for the convening of a special general meeting.

Rule 23 provides:

> "Sanction of Chief Constable.—All resolutions and decisions passed at all meetings of the Association are subject to the approval of the Chief Constable."

(2) Membership of the Association is open to any serving member of the City of Glasgow Police Force on a voluntary basis, and until the year 1947, membership of the Association was a condition of service for all new entrants to the Force. This condition of service was abolished in 1948. Since membership became voluntary all recruits have joined the Association. The present membership is approximately 85 per cent. of the entire force.

Under rule 9 membership is also open to ex-members of the force. The retiring age for sergeants and constables is 55 and for inspectors and superintendents 60. At 30th September, 1950, only nine ex-officers of the force remained members of the Association. Ex-officers make very useful coaches.

As provided by rule 10, the membership subscription is 3*d.* per week for serving officers and 5*s.* per annum for ex-officers.

(3) Pursuant to rules 4 and 5, the management of the Association is vested in an executive committee, which is comprised of a representative from each police division, one from each sporting or athletic section, an honorary secretary, an honorary treasurer and two vice-presidents who are appointed by virtue of their rank as superintendents or assistant chief constables. By virtue of rule 23, the decisions of the committee are subject to the approval of the Chief Constable, who is thus in a position to bar anything which he may consider inimical to the best interest of the force.

(4) Divisional activities are managed by divisional committees, and each branch of sport or pastime by a sectional committee. In addition to the sections specifically mentioned in rule 4 there are also sections for table tennis, photography and art. Competitions with the outside public are arranged by the sectional committees. The table tennis section competes exclusively with outside clubs. The photographic and art sections have their own committees and their own annual exhibition. There is no special section for social activities, which are confined to each of the eight divisional committees. Dances are organised by divisional committees. There is no section committee for dances. Each division runs a dance about once in every three months.

As required by rule 11, the members of the various sections are all amateurs as defined by the laws of the sport or pastime concerned.

Save as mentioned in the next paragraph, the Association makes no financial payments to its officers or members, whether by way of honoraria or otherwise.

(5) One of the activities of the Association is swimming and life saving. There is no other association in Glasgow which meets these needs. The Association is affiliated to the Royal Life Saving Society and pays the expenses of members taking their efficiency certificates. Members frequently receive awards for their life saving efforts.

(6) Sports, confined to members of the Association, are held in May of each year as a preliminary to and preparation for the annual sports hereinafter mentioned and the annual championships of the Police Athletic Association (more particularly referred to below).

(7) The nature of the annual sports (being the trade referred to in paragraph I hereof) is that of an amateur sports meeting, open to competitors from all parts. It is run by the Association annually for the purpose of providing funds for the Association. It is attended by approximately 50,000 people, who pay a charge for admission, and the profits are applied solely to the purposes of the Association.

There are confined events for members of the Association, for members of other police clubs in Scotland and Great Britain, and events open to all amateurs, for which members of the Association are eligible and in which they do, in fact, compete. In the sports held in 1949, there were 39 events, of which 4 were confined to police officers, but the police could enter the other events. Efforts are made each year to have some outstanding competitors as a special attraction, and to secure participation by top class amateurs from other countries.

All the preliminary work in connection with the meeting is done by the Association itself acting through a committee of its members. This committee is assisted in its work by a large number of members of the Association who carry out the sale of the tickets and many other useful functions.

The sports themselves are held at Hampden Park, Glasgow, by courtesy of the Queens Park Football Club, who make no charge for the use of the park. The work in connection with the use of the ground, which is of a nature arising on every occasion on which the ground is open to the public is retained in the hands of the permanent ground staff. The whole control of the sports themselves, the events, the competitors, the general public, is done by members of the Association who act as the clerk of the course, linesmen, stewards, and in general, as the officials of the sports.

The judges, starters and timekeepers are supplied by the Scottish Amateur Athletic Association in order to comply with the obligations necessary to have the meeting recognised as an amateur one.

The control of all traffic in connection with the sports which is, in itself, a big undertaking is in the hands of the members of the Association, and, on this occasion, differentiating it from all other similar sports meetings, no charge is debited against the proceeds of the sports or made against its promoters in connection with the services of the police.

The deductions from the takings on the ground are as shown in the annual report and balance sheet hereinafter referred to. The net proceeds are paid into the general funds of the Association, and there is no allocation of these proceeds or any part of them to any special function of the Association. The surplus funds of the Association are at present being accumulated for the purpose of providing a pavilion at a sports ground leased by the Association and used entirely by members of the Association for athletics. It is provided by the lease of the said sports ground that no charge may be made for admission thereto.

(8) A print of the Thirteenth Annual Report and balance sheet of the Association, being that for the year ended 30th September, 1950, is hereto annexed, marked " B," and forms part of this Case[1]. Pages 8 to 18 give an account of the activities of the Association under the various heads hereinbefore mentioned for the year ended 30th September, 1950. Pages 20 to 31 set out the various accounts of the Association for that year. The total revenue of the Association for that year was £2,778, of which £1,225 was derived from members' subscriptions and £1,214 from the profit on the annual sports. The annual sports accounts are at pages 26 and 27. These show, *inter alia,* two receipts of £200 each, one being from the R.U.C. Athletic Association and the other from the Athletic Union of Ireland. The circumstances relating to those receipts were that the Association had arranged to bring over teams of athletes from America, and it asked the police associations of Ulster and Eire whether they, also, wished to send teams, on the understanding that, if so, they should pay part of the Respondent Association's expenses. Both Ulster and Eire in fact sent teams, and made these payments accordingly.

(9) The Association is affiliated to the Police Athletic Association, a central body founded in 1928, whose constitution and rules were approved by the Secretary of State for the Home Department on 31st December, 1946, and by the Secretary of State for Scotland on 14th December, 1946. The objects of this association are ;

(*a*) To encourage the development of all forms of amateur sport throughout the police forces ;

(*b*) To promote and control, subject to the rules and regulations of the various governing associations and societies, suitable competitions and championships within the police services.

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[1] Not included in the present print.

Its membership is confined to police forces in Great Britain and Northern Ireland.

Its management is vested in:—

(*a*) As joint presidents, the Secretary of State for Home Affairs, the Secretary of State for Scotland and the Minister of Home Affairs for Northern Ireland and as joint vice-presidents various prominent persons associated with police administration; and

(*b*) Sixteen members representing the various police districts. Appointment is subject to the approval of the Home Office or, in the case of Scottish representatives, of the Scottish Office.

The Police Athletic Association organises athletic and sporting competitions between the forces throughout Great Britain and Northern Ireland, both between forces and between countries. These produce healthy competition and the public take considerable interest in them.

The witness, Detective Sergeant H. F. Thomson, is a member of the council of the Police Athletic Association, and attends its annual conference.

(10) The relations between the Respondent Association and the City of Glasgow Police Force are very close. All necessary facilities are given for the successful running of the Association, and members are given every opportunity to participate in its activities. It is regarded as an essential part of the police organisation, and plays an important part in the maintenance of health, morale and *esprit de corps* within the police force. It is essential to have a contented police force. By reason of the nature and times of their duties members of the police force are restricted in participating in general social activities and some attractions have to be offered in order to obtain recruits (who are hard to get) and to keep members of the force happy in their work so that they do not leave. The activities of the Association also help to keep them physically fit. The Association gives its members a chance of meeting other members of the public socially. It is realised that it is to the advantage of the police to meet a cross section of the public. The Association encourages the men to compete with outside clubs. That, again, promotes good feeling with the public. It is an object of the Glasgow police to make the people like them rather than fear them.

(11) There were put in evidence before us paragraphs 40 and 41 of the Third Report (published in 1949) of the Police Post-War Committee, appointed by the Home Office and Scottish Home Department to consider and report on the principles to be followed in the post-war police service, with reference (*inter alia*) to "amenities and welfare." These paragraphs, which appear under the head of "Outdoor Amenities," are as follows:—

> "40. The first point which arises in connection with outdoor amenities is whether or not it would be better for policemen to mix with general sports clubs than to have clubs of their own. It would, generally speaking, be to the advantage of the men to get away from the atmosphere of their work for their sporting activities. Mixing with members of other professions and trades would help to broaden their interest and to increase their understanding of the general public—and indeed it would doubtless be to the benefit of other members of the community to share some of their leisure time with policemen off duty. But it is a fact that the varying hours of police duty make mixing with ordinary clubs difficult, and to this extent there is an undoubted need in most forces for a Police Sports Club. Moreover the police have a good reputation in the many fields of sport—rugby, football, cricket, boxing, Highland games, etc.—and it is only natural that they should wish to maintain that reputation.

41. Sports Grounds.—In a force where a Police Sports Club is justified—and a good case could probably be made out for all forces of at least a moderate strength—the police authority should, if suitable land is available provide the sports ground. It is realised that there may be difficulty in finding a suitable site but, when possible, the ground should be big enough for football and, if necessary, for cricket. Tennis courts should also be provided. The maintenance of the ground should be met out of a Sports Fund, to which all members of the force should be required to pay a small weekly (or monthly) contribution."

(12) There were also put in evidence before us paragraphs 391 and 392 of Part II of the Report (dated 31st October, 1949) of the Committee on Police Conditions of Service, appointed on 12th May, 1948 by the Secretary of State for the Home Department and the Secretary of State for Scotland to consider in the light of the need for the recruitment and retention of an adequate number of suitable men and women for the police forces of England, Wales and Scotland, and to report on pay, emoluments, allowances, pensions, promotion, methods of representation and negotiation and other conditions of service. (The chairman of the Committee was Lord Oaksey). These paragraphs, which appear under the head "Miscellaneous," are as follows:—

"391. The representatives of the Police Athletic Association, in their evidence before us, urged the importance of organised sport for police efficiency and contentment. It appears that many police authorities provide sports grounds and any expensive equipment and contribute towards their upkeep, but that the running expenses of the various sports clubs in police forces are met mainly by contributions from the men, by the sale of tickets for attendance at matches, and from profits of concerts, etc., organised to raise money. These sports funds also help to pay the travelling and subsistence expenses of the teams chosen to represent the club in games against other divisions or forces. It was put to us, however, that many of them are in financial difficulties, and that a number do not find it possible, for lack of funds, to take part in the competitions organised on a countrywide basis by the Police Athletic Association. Amongst those that do, the funds available are apparently insufficient to meet the full expenses of those taking part in representative games, and we were asked to recommend:—

(*a*) that each police authority should be required to contribute to the funds of the sports clubs in the force on a capitation basis of 10s. a year for the whole authorised establishment of the force; and (*b*) that men who are selected to take part in any of the athletic competitions organised by the Police Athletic Association should be treated, for purposes of travelling and subsistence expenses, as if they were on police duty.

The first of these would call for an expenditure from the Police Fund of about £35,000 a year in England and Wales and about £3,500 a year in Scotland. The cost of the second item is more difficult to estimate, but our witnesses made enquiries which indicated that if such an arrangement had been in force during the previous financial year the total cost to all police forces would have been rather more than £5,000. If financial support of this kind had been available, however, more men might have been expected to take part (since it appears that many were prevented from doing so because they could not afford it) and an expenditure of something like £6,500 a year or more might be expected.

392. In our view, organised games and athletics are amenities which are good for the health and morale of policemen, and which ought to do much to make the police service attractive to men of the type that it is desired to recruit. We think that police authorities should be encouraged to meet out of the Police Fund the cost of providing sports grounds, pavilions and similar capital charges which would be beyond the men's means, but we do not think it would be right for police authorities to meet the whole cost of organised sport in police forces. The men should be prepared to do their part. We recommend that police authorities should contribute annually towards the cost of sports clubs whose activities are approved a sum equal to the amount of the fixed subscriptions paid by members of the club up to a maximum of 10s. a head; and that these funds should be used *inter alia* to help to defray the

expenses of the members of the force who are chosen to take part in representative games. Where this is done, provision should be made for the police authority, if they wish, to be represented on the committee of management."

(13) The financial recommendations above mentioned have not yet been put into effect as regards the Respondent Association, which is still supported wholly by voluntary subscriptions. Many police forces have now similar associations. Such organisations play an important part in the efficiency of the police service, in the recruiting of the forces and in maintaining their *esprit de corps.*

A print of a pamphlet "The Police Service—a worth-while career for men and women who want to serve the Public," issued by the Home Office and the Scottish Home Department, is hereto annexed, marked "C," and forms part of this Case(1).

III. It was contended on behalf of the Respondent that the Association was a body of persons established for charitable purposes only and (it being conceded on behalf of the Appellants that the profits of the said trade of holding annual sports were applied solely to the purposes of the Association, and that the work in connection with the said trade was mainly carried on by beneficiaries of the Association), the Association was accordingly entitled to exemption, under Section 30 (1) (*c*) of the Finance Act, 1921 (as amended by Section 24 of the Finance Act, 1927) from Income Tax under Schedule D in respect of the profits of the said trade.

A number of authorities was cited to us.

IV. It was contended on behalf of the Appellants that having regard to the wide nature and extent of the objects for which the Association was formed, it was not a body of persons or trust established for charitable purposes only, and was therefore not entitled to the exemption claimed.

Several authorities were relied on in support.

V. We, the Commissioners who heard the said claim, entirely accepted that the object specified in rule 2, namely,

"to encourage and promote all forms of athletic sports and pastimes"

was not, *per se,* a charitable object,

"apart from special concomitants"

(see *Commissioners of Inland Revenue* v. *National Anti-Vivisection Society,* 28 T.C. 311, *per* Lord Wright at page 353). On the facts of this case, however, we found the following "special concomitants," viz.;

(*a*) the object specified in rule 2 was the object of an association consisting exclusively of officers and ex-officers of the City of Glasgow Police Force (rule 8).

(*b*) The Chief Constable was the president and the assistant chief constables and superintendents were the vice-presidents of the association (rule 3).

(*c*) All resolutions and decisions passed at all meetings of the Association were subject to the approval of the Chief Constable (rule 23), who therefore retained the ultimate control of the Association.

(*d*) The Association was regarded by the Senior Officers of the City of Glasgow Police Force as an essential part of the police organisation.

(1) Not included in the present print.

(*e*) The Secretary of State for the Home Department and the Secretary of State for Scotland had approved the constitution and rules of the Police Athletic Association, whose purpose was to encourage the development of all forms of amateur sport throughout the Police Forces of the United Kingdom, and the respondent Association was affiliated to this Association.

(*f*) The existence and activities of the Respondent Association ;

(*i*) played an important part in the maintenance of physical fitness, health, morale and *esprit de corps* within the Force.

(*ii*) attracted recruits to the force ;

(*iii*) helped to maintain the strength and efficiency of the force, by conducing to a contented force, keeping members happy in their work and inducing them to continue in the force, rather than leave it ;

(*iv*) conduced to the public order by promoting good relations between the force and the general public ;

(*v*) increased the efficiency of the force, generally, and thereby directly benefited the public.

In In re *Gray*, [1925] 1 Ch. 362, (gift to a regimental fund for the promotion of sport) Romer, J. at page 366 cited the following words of Farwell, J., in In re *Good*, [1905] 2 Ch. 60 (gift of library and plate for an officers' mess), at page 66 :

> " I have come to the conclusion that this is a good charitable gift on the first ground—namely that it is a direct public benefit to increase the efficiency of the Army, in which the public is interested, not only financially but also for the safety and protection of the country."

The increase of the efficiency of police forces appeared to us analogous to the increase of the efficiency of the Army. In In re *Foveaux*, [1895] 2 Ch. 501, Chitty, J. at page 504, laid down that

> " Institutions whose objects are analogous to those mentioned in the statute [of Elizabeth] are admitted to be charities ; and, again, institutions which are analogous to those already admitted by reported decisions are held to be charities."

It appeared to us, therefore, that (subject to the further contention of the Appellants next mentioned) the combination of the " special concomitants " above-mentioned was sufficient to constitute the Association a charity.

One of the contentions of the Appellants was that the claim failed in any event, because by rule 4, membership included ex-officers, as well as serving officers, and reliance was placed on In re *Good*, in so far as that case concerned the gift of two houses for the use of old officers, and on In re *Meyers*, [1951] 1 All E.R. 538, in so far as that case concerned the gift for (*inter alios*) past members of the Navy. We were of opinion, however, that these decisions were distinguishable in that (*a*) on the terms of the rules of the Association it would be impossible to limit membership (and the benefits thereof) to ex-officers—on the contrary, although a few ex-officers were admitted as members, the whole purpose was to bring in all the serving members, and (*b*) on the evidence, the inclusion of ex-officers was directly conducive to the efficiency of the Association (and therefore of the police force) in that ex-officers made very good coaches.

We therefore held that the Association was a body of persons established for charitable purposes only, and (it being conceded on behalf of the Appellants that, on this footing, the remaining conditions of

Section 30 (1) (*c*) of the Finance Act, 1921, amended as aforesaid, were satisfied) we accordingly allowed the said claim.

VI. The Appellants immediately after the determination of the appeal declared to us their dissatisfaction therewith as being erroneous in point of law and having duly required us to state and sign a Case for the opinion of the Court of Session as the Court of Exchequer in Scotland, this Case is stated and signed accordingly.

VII. The question of law for the opinion of the Court is whether the City of Glasgow Police Athletic Association is, within the meaning and for the purposes of Section 30 of the Finance Act, 1921 (as amended by Section 24 of the Finance Act, 1927), a charity, namely a body of persons established for charitable purposes only.

F. N. D. Preston
G. R. Hamilton
} Commissioners for the Special Purposes of the Income Tax Acts.

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

9th August, 1951.

The case came before the First Division of the Court of Session (the Lord President (Cooper) and Lords Carmont and Russell) on 11th and 12th December, 1951, when judgment was reserved. On 19th December, 1951, judgment was given against the Crown, with expenses.

The Lord Advocate (Mr. J. L. Clyde, K.C.), and Mr. I. H. Shearer, appeared as Counsel for the Crown, and Mr. J. O. M. Hunter, K.C., and Mr. A. M. Russell for the Association.

Lord Carmont.—The Respondents in this case claim to be a body of persons "established for charitable purposes only" and therefore that the profits of the holding of an annual sports meeting were exempt from Income Tax under Section 30 (1) (*c*) of the Finance Act, 1921, as amended.

The annual sports are held under the auspices of the City of Glasgow Police Athletic Association which has been formed to encourage all forms of athletic sports and general pastimes. Included in the afore-mentioned generality are angling, badminton, billiards, bowls, boxing and wrestling and cricket, football and golf, and also table tennis, photography and art, together with the holding of dances and participation in mystery tours in motor vehicles.

As a lawyer without any pretensions to the knowledge of any other system of law, I was at first inclined to regard the Respondents' claim as somewhat, if not wholly, ridiculous. I find, however, that the Special Commissioners who decided this case, while starting from the view that an association formed to encourage and promote all forms of athletic sports and pastimes had not *per se* a charitable object, reached the conclusion that there were here "special concomitants" the existence of which justified the Respondents' exemption from tax as an association established for charitable purposes only. The concomitants referred to are: that the Association is exclusively for the officers and ex-officers of the Glasgow police force under the control of the Chief Constable and regarded as being an essential part of the police organization; that the Secretaries of State

(Lord Carmont.)

for the Home Department and for Scotland have approved of the constitution and rules of the Association so as to encourage the development of all forms of amateur sport throughout the police forces of the United Kingdom; that the existence and activities of the Association play an important part in the maintenance of physical fitness, health, morale and *esprit de corps* within the force and attract recruits to it and so help to maintain strength and efficiency by conducing to a contented force, keep the members of it happy and induce them to continue in it rather than leave it. Finally it is said that the Association conduces to public order by promoting good relations between the force and the general public and, by increasing the efficiency of the force generally, directly benefits the public. It only remains to add that on the success of the annual police sports depends the financial stability of the Association.

Put in the smallest compass, it is said that the beneficiaries of this charity are the public—the benefit being conferred through the creation and continuance of a happy and contented police force.

The legal bridge used by the Special Commissioners to reach their conclusion in favour of the Respondents is a group of cases decided in the Chancery Division of the High Court of Justice in England which sustained as charitable gifts which had the effect of increasing the efficiency of the British Army and so conferring a *direct* benefit on the public. As the gifts in question were (1) to a regimental fund for the promotion of sport (In re *Gray*, [1925] 1 Ch. 362) and (2) of a library and plate to an officers' mess (In re *Good*, [1905] 2 Ch. 60) it seems to me that the benefit can hardly be described as direct when considered with reference to the public. But it may be that a gift which confers some benefit on the public—however remotely, may in England satisfy the tests touching charity and it may be that the decisions referred to are valid even if only a remote public benefit is secured.

Let me say at once in order to make my position plain that if the two decisions which I have cited had been decisions of a single judge in the Outer House of the Court of Session I personally would not have followed them. It is said however by the Respondents in this case that these decisions are the accepted law of England and that it is the law of England which must be applied when we are interpreting a Finance Act of general application to the United Kingdom when the field of interpretation is: "What are charitable purposes?" I must ask your Lordships' forbearance in considering our position in this Court in regard to this matter.

It requires no more than a statement to secure agreement that it is highly desirable that in the interpretation of a United Kingdom statute, particularly as regards taxing matters, there should be uniformity as between the jurisdictions affected. *Pemsel's* case[1] informed us, in an authoritative decision in 1891, that the words "charitable purposes" in a Finance Act (also applicable to Scotland) must be construed according to the legal and technical meanings given to those words by English law. This was decided by a bare majority, the dissenting judges, Halsbury, L.C., and Lord Bramwell, taking the view that the technical construction of the words "charitable purposes" imputed by the majority to English law could not be accepted as the right interpretation as that meaning had not been adopted in Scots law. It would have been easy for the majority to have said: "it matters not that Scots law puts another meaning on the

(1) 3 T.C. 53.

words 'charitable purposes' in trust law and other connections; in this Finance Act, you must read 'charitable purposes' as meaning what it does on the technical construction put on the words by English law." To have said that would have been tantamount to saying that Scots judges must learn English Chancery law and as we only know what foreign law is by being informed of it as a matter of fact the majority judges carefully avoided saying it. They supported their decision by the statement that Scottish judges did not need to be informed as to the technicality of Chancery law on the point because said Lord Watson(1):

> ". . . I am satisfied that, in legislative language at least, the expression 'charitable' has hitherto borne a comprehensive meaning according to Scotch (*sic*) as well as according to English law."

And Lord Watson added later(2):

> ". . . the word 'charitable' . . . has been employed in the legislative language of the Scottish Parliament and of the British Parliament when legislating for Scotland in substantially the same sense in which it has been interpreted by English Courts. It must, therefore, in my opinion, receive that interpretation in the Income Tax Act of 1842."

But Lord Watson does not say what is to take place as regards those points in which the law is not the same. Lord Macnaghten says(3):

> "I have come to the conclusion that the expression 'trusts for charitable purposes' in the Act of 1842, and the other expressions in the Act in which the word 'charitable' occurs, must be construed in their technical meaning according to English law."

After sketching with cynical amusement Scotland's inferior position in legislative enactments since the time when Lord Hardwicke stuck polite pins into Lord Kames when he pointed out that, when there are two countries with different systems of jurisprudence under one Legislature, the expressions in statutes applying to both are almost always taken from the language or style of one and do not harmonise equally with the genius or terms of both systems of law, Lord Macnaghten softens what he has had to say(4) by borrowing the words of Lord Chelmsford(5):

> "I cannot discover that there is any great dissimilarity between the law of Scotland, and the law of England with respect to charities."

But whether or not the dissimilarity was less than great in Lord Chelmsford's time, the law regarding charities was different and it seems to me to have been growing not less, but more, different ever since. It seems to me to be inevitable that this should be so for the Court of Chancery seems to boast of broadening its principles from precedent to precedent. Even if it be taken that the differences were not great in 1891, and that it is the duty of the Court of Session to accept under the *Pemsel* decision(6) the meaning of "charitable purposes" as interpreted technically under English law and as settled down to that date, and only as extended by decisions in the House of Lords which must be accepted as authoritative by our Courts, must we go on trying to follow the technical development of the meaning of charitable purposes as decided in the Court of Chancery? Lord Macnaghten had a view on this matter which was expressed in *Pemsel's* case(1).

> "I cannot help," he said, "reminding your Lordships, in conclusion, that the Income Tax Act is not a statute which was passed once for all. It has expired, and been revived, and re-enacted over and over again. Every revival

(1) 3 T.C. 53 at p. 78. (2) *Ibid.*, at p. 82. (3) *Ibid.*, at p. 99.
(4) *Ibid.*, at pp. 94-5. (5) *Magistrates of Dundee* v. *Morris*, 3 Macq., 154.
(6) 3 T.C. 53. (7) *Ibid.*, at p. 102.

(Lord Carmont.)

> and re-enactment is a new Act. It is impossible to suppose that on every occasion the Legislature can have been ignorant of the manner in which the tax was being administered by a Department of the State under the guidance of their legal advisers. . . . The point, of course, is not that a continuous practice following legislation interprets the mind of the Legislature, but that when you find legislation following a continuous practice, and repeating the very words on which that practice was founded, it may perhaps fairly be inferred that the Legislature in re-enacting the statute intended those words to be understood in their received meaning. And perhaps it might be argued that the inference grows stronger with each successive re-enactment."

If this is the correct approach to the matter then it would appear that the Finance Act of 1921 carried within it the technical interpretation of the Court of Chancery up to that year including In re *Good*(1) which is relied on by the Special Commissioners in this case. Further, accepting Chitty, J., in In re *Foveaux*, [1895] 2 Ch. 501(2):

> "Institutions whose objects are analogous to those mentioned in the statute [of Elizabeth] are admitted to be charities; and, again, institutions which are analogous to those already admitted by reported decisions are held to be charities."

It was because of the combination of "special concomitants" specified by the Special Commissioners that they have found that the Respondent Association constitutes a charity. I have no legal qualification to say whether or not the Chancery decisions relied on correctly state the English law and give the technical meaning to charitable purposes as that phrase is used to-day. Many Chancery decisions regarding trusts are couched in language which I do not pretend to understand. The law seems to me to be as stated by the Special Commissioners but I am quite without qualification to say that it is so. If *Pemsel's* decision(3) has to be read as stated and carried up to date then the present appeal to this Court from the Special Commissioners seems an idle formality and to accord ill with the dignity of an Appeal Court.

Lord Russell.—The question of law to be decided is whether the Respondent Association has been rightly held to be a charity as being a body of persons "established for charitable purposes only" within the meaning of Section 30, Sub-section (1) (*c*) (as amended) of the Finance Act, 1921. In a Scottish Court the words "charity" and "charitable" occurring in an instrument are construed in accordance with the canons of construction and the principles of trust law recognised by the law of Scotland. For a brief and succinct account of the conflicting judicial pronouncements preceding the latest judicial approval of that proposition I may refer to the opinion of the Lord President in *Wink's Executors*, 1947 S.C. 470. But it is the case that where those words occur in a United Kingdom taxing statute a Scottish Court must give them the meaning accorded by the law of England. That was so laid down in the House of Lords, in 1891 in the case of *Pemsel*, [1891] A.C. 531. In *Jackson's Trustees*, 1926 S.C. 579, in which a question was raised as to the meaning of the words "charitable purposes only" occurring in Section 37 (1) (*b*) of the Income Tax Act, 1918, Lord President Clyde stated(4):

> ". . . .what is the meaning of 'charitable purposes' as used in that section? As was made clear by the decision in the case of *Pemsel*, that is a question which must be answered according to the meaning of the expression 'charitable purposes' in the law of England, and not with regard to the meaning which those words naturally bear in the law of Scotland."

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(1) [1905] 2 Ch. 60. (2) At p. 504. (3) 3 T.C. 53. (4) 10 T.C. 460 at p. 478.

In the same case Lord Sands said(1):

> " Accepting as we must do the case of *Pemsel* as binding upon us, it follows that, in determining what is charitable within the meaning of the taxing Act, we must consider what is within the definition of charity in the law of England."

In the more recent case of *Trustees for the Roll of Voluntary Workers,* 1942 S.C. 47(2) similar views are expressed in the opinions delivered by Lord President Normand and Lord Fleming. I venture to quote one sentence from the opinion of Lord Moncrieff(3), namely:

> " I recognise, however, that . . . we must for income tax purposes disregard the law of charity in Scotland and endeavour to apply the requirements of a system [the law of England] with which we do not profess to be familiar."

In a Scottish tribunal the law of England is regarded as a foreign law. Its ascertainment is matter of fact (see for example, *Dickson on Evidence, para.* 394) to be determined by evidence or by joint admission furnished by the litigants. Moreover, statutory provision exists whereby a case may be presented to the foreign Court for the ascertainment of the law on a particular question. A perusal of the facts found in the present case shows that no evidence was led and no admission made as to the requirements of English law in respect of the activities and purposes of a body like the Respondent Association relevant to determine its claim to be established for charitable purposes only. Of the decisions cited to us by Counsel during the debate, the recent case of the *National Anti-Vivisection Society*(4), [1948] A.C. 31, reveals *inter alia* that on this branch of the law the decisions pronounced by the English Court are numerous and not easily reconcilable. It seems plain that the Special Commissioners in arriving at their decision in this case did so by applying, as they were bound to do, the English law of charitable trusts with which no doubt they are familiar. We are invited to hold that their decision is wrong in that it is not supported by that law—a law as to which I at least am not competent to pronounce a reasoned judgment. The perplexity in which this Court is thus placed in the present case has been more fully discussed and commented on in the opinions of your Lordships which I have had an opportunity of considering. I respectfully agree with the analysis of the situation and I desire to associate myself with the comments made therein by your Lordships upon the embarrassing position of the Court in this case. I think it right, however, in deference to the arguments presented to us by Counsel, to state shortly the essential facts which seem relevant to the question raised for our decision. In doing so I note that Counsel on both sides were agreed that the Association's claim to be a charity depends on its being shown that it is a body established for purposes beneficial to the community or to some sufficiently defined portion of the community—and so falling within the fourth category of Lord Macnaghten's classification of charity as expounded in the case of *Pemsel*(5). Further, I accept, as did the Commissioners, the *dictum* of Lord Wright in the *Anti-Vivisection* case(6) to the effect that 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.

Turning now to the facts, it appears that the Association formed in 1938, was established with the purpose of co-ordinating the various athletic

(1) 10 T.C. at p. 479. (2) 24 T.C. 320. (3) *Ibid.*, at p. 327.
(4) 28 T.C. 311. (5) 3 T.C. at p. 96. (6) 28 T.C. at p. 353.

(Lord Russell.)

and sporting activities of the Members of the City of Glasgow Police Force. Its object is to encourage all forms of athletic sports and general pastimes, and its membership, at first compulsory to all new entrants to the force but since 1948 voluntary, comprises 85 per cent. of the entire force, including all post-1948 recruits. It is administered by and all its office-bearers are members of the force, of whom the Chief Constable as president must approve all resolutions and decisions passed at all meetings of the Association. Each serving member of the force pays a weekly subscription and each ex-member of the force—these being also eligible for membership—pays an annual subscription. The rules and activities of the Association are very fully described in the Case and need not be further particularised save to mention that in each year the Association organises and holds an open amateur sports meeting in Glasgow for the purpose, *inter alia*, of raising funds which are applied for the Association's purposes. For the year ending 30th September, 1950, the Association's total revenue was £2,778 derived as to £1,225 from members' subscriptions and as to £1,214 from the profit on the annual sports meeting. *Prima facie* the latter sum represents the profits of a trade—in regard to which exemption from Income Tax is claimed. From the detailed findings of fact in the Case it appears to me that the Association may not inaptly be described as an officially recognised branch of activity participated in by 85 per cent. of the members of the Glasgow police force aimed at and resulting in the increase of the efficiency of the force. The Special Commissioners have found that in fact the increased efficiency of the force so resulting directly benefits the public in respect of four different matters. These shortly stated are (1) fitness, morale and *esprit de corps* within the force ; (2) the attraction of recruits ; (3) the retention in the force of members rendered contented and happy at their work ; and (4) the promotion of good relations between the force and members of the public—a circumstance conducive to public order.

If I accept the facts thus enumerated am I in a position to affirm that the Special Commissioners were bound by the law of England to hold that the Association is not a body of persons established for charitable purposes? It was suggested in argument that since in 1891 it was authoritatively affirmed in the House of Lords that there was little, if any, difference between the law of England and the law of Scotland in regard to the legal meaning of charity, the law of England to be applied to the present case is the law of England as it existed in 1891, and that accordingly this case is capable of being decided by the application of Scots law. I do not feel able to assent to the view so presented since it is clear that in repeated decisions pronounced in the English Courts subsequent to 1891 the concepts of what is embraced by charity in English law have been altered, adapted and extended by legal decisions from time to time. I am therefore forced to the conclusion that the law of England which falls to be applied is the law as expounded and illustrated by decisions given in the English Courts both before and since 1891. In that situation I may mention some of the decisions founded upon by Counsel for the Association in support of their argument that this appeal should be refused. In *Halsbury's Laws of England* (Vol. IV, s. 164) it is stated that gifts tending to increase the efficiency of the Army are now a recognised category of charitable gifts in England. That statement seems to be supported by decisions pronounced in the Chancery Courts in such cases as In re *Good*, [1905] 2 Ch. 60 ; In re *Donald*, [1909] 2 Ch. 410 ; In re *Gray*, [1925] 1 Ch. 362 ; In re *Lord Stratheden*, [1894] 3 Ch. 265 ; and In re *Stephens*, (1892), 8 T.L.R.

792. It appears also from the speeches delivered by their Lordships in the *Anti-Vivisection* case(1) that the original objects of charity contained in the Statute of Elizabeth are from time to time diminished or enlarged by decisions pronounced in the Court of Chancery to meet changes in social habits, knowledge and the like, and that these original objects are thus capable of being augmented by way of analogy. If the purpose of a gift is the promotion of physical efficiency in the members of a regiment by means of the provision of facilities for engaging in sport and is therefore a valid charitable purpose as being beneficial to the community (see, *e.g.*, In re *Gray*), it may be arguable by way of analogy that a similar purpose directed to the promotion of such efficiency in the members of a police force is also a charitable purpose as being beneficial to a defined section of the community. The Respondent Association consists of a body of persons representing a section of a uniformed, disciplined force organised for the maintenance of law and order among the citizens of Glasgow. If, therefore, it is permissible to expand the concept of purposes which are "beneficial to the public" as covering purposes which aim at and result in the promotion of efficiency of an army unit, it may be difficult to distinguish between the Army on the one hand and the national police force on the other hand so as to exclude the latter from the category so expanded. The Special Commissioners appear to have been able to apply that principle; and they have also found that the "special concomitants" referred to in the above-quoted *dictum* of Lord Wright are in fact present as features of the activities and purposes of the Association.

I need not pursue the matter further. If the case is a narrow one the decision of the Special Commissioners is not one to be lightly overruled. If I felt myself free to decide this case by reference to the law of Scotland I would be disposed to sustain the appeal. Since however I am bound to reach a decision by applying the law of England—the knowledge of which I do not profess—I do not feel justified in differing from the conclusion arrived at by the Special Commissioners and I therefore agree that the appeal should be refused.

The Lord President (Cooper).—The question raised by this appeal is whether the Special Commissioners were right in holding that this athletic and recreational association is entitled to exemption from Income Tax as a "charity" by virtue of Section 30 of the Finance Act, 1921, as amended by Section 24 of the Finance Act, 1927, the issue being whether the Association is a body of persons "established for charitable purposes only".

My difficulty is to determine what function a Scottish Court is under a duty to discharge in a case of this kind, and I feel bound to state this difficulty fully.

It has long been recognised that taxing statutes applicable to both Scotland and England tend to utilise the vocabulary of English law, and in dealing with an estate duty problem Lord Dunedin in *Lord Advocate* v. *Earl of Moray's Trs.*, 1904, 7 F. (H.L.) 116 at page 122, said that

> "the Scottish Court must do its best to give effect to the meaning of the statute, not by treating English law terms as unmeaning symbols, but as terms which, although not terms of art in Scotland, may be taken as words of ordinary popular signification, and as such are capable of application to the Scottish system."

(1) 28 T.C. 311.

(The Lord President (Cooper).)

Substantially the same rule had been laid down by Lord President Inglis in *Baird's Trustees,* (1888), 15 R. 682 at page 688, as regards Income Tax. In *Gunning's Trustees,* 1907 S.C. 800, this Court under the leadership of Lord Dunedin had no difficulty in holding that a United Kingdom taxing Act dealing with estate duty might have a different application in Scotland and in England because of the differences in the law. But in Income Tax law a very different rule was laid down in the speech of Lord Watson in *Pemsel*(1), [1891] A.C. 531, at page 554, an English appeal from which three conclusions flow, *viz.*:—(1) that *Baird's Trustees* was wrongly decided, the headnote expressly stating that it was "disapproved"; (2) that the meaning of the word "charitable" in Income Tax cases should be ascertained according to English law and the practice of the Court of Chancery, and (3) that the meanings assigned in 1891 to the word "charity" and "charitable" both in England and Scotland were not the same but that the terms were "practically but not absolutely co-extensive" (*Pemsel* at p. 558), "substantially the same" (p. 563), "practically co-extensive" (p. 573), and "without any great dissimilarity" (p. 582).

So matters were left in 1891, and development proceeded upon the basis of accepting in Scotland Lord Macnaghten's celebrated definition. But the law has not stood still either in Scotland or in England during the last 60 years and the perplexities involved in the application of the rule in *Pemsel* have greatly multiplied.

For one thing, *Baird's Trustees* was partially exhumed by Lord Halsbury, L.C., in 1902, (*Blair* v. *Duncan,* 1901 4 F. (H.L.) 1), and inferentially by the decision of the House of Lords in 1905, (*Grimond,* 7 F. (H.L.) 90), in which the House approved of the dissenting judgment of Lord Moncrieff who had relied upon *Baird's Trustees* as still authoritative. The embarrassment created by this seeming contradiction is evidenced by *Allan's Executor,* 1908 S.C. 807, and *Anderson's Trustees* v. *Scott,* 1914 S.C. 942, and it is noteworthy that *Baird's Trustees* was still being judicially relied upon in 1929, (*Reid's Trustees* v. *Cattanach's Trustees,* 1929 S.C. 727). I am fully aware that these were not Income Tax cases, but the point is that these later Scottish appeals and decisions are very difficult to reconcile with the views expressed in the English appeal in *Pemsel* to the effect that the meanings assigned to "charity" and "charitable" on both sides of the border were "substantially the same", or with the formal "disapproval" of *Baird's Trustees.*

Again, the development of the general law as to "charities" in Scotland and in England has progressed since 1891 in the direction of a widening divergence and the social and economic background has been transformed since Victorian days. For instance, *Hay's Trustees,* 1908 S.C. 1224, cannot be reconciled with *Chichester Diocesan Fund,* [1944] A.C. 341, but in *Wink's Executors* v. *Tallent,* 1947 S.C. 470, where the matter was fully considered, *Hay's Trustees* was followed. So far as England is concerned, we have the high authority of Lord Simonds for the proposition (*National Anti-Vivisection Society*(2), [1948] A.C., at page 75) that

> "the cases decided on this branch of the law are legion in number and are not easy to reconcile"

—a proposition with which, after listening to the argument in this case, I would venture to express my humble concurrence. Moreover it clearly appears from the *Anti-Vivisection* decision that ever since the days of the

(1) 3 T.C. 53 at p. 75. (2) 28 T.C. 311 at p. 375.

(The Lord President (Cooper).)

Statute of Elizabeth the Court of Chancery has been engaged, and its successor the Chancery Division still is engaged, in the light of "changing social habits", "changes in the law" and "increasing knowledge", upon the unending task of contracting or expanding by successive analogies "one by one" the concepts enshrined in the original enumeration contained in the old statute, and that "a crucial test" in determining whether a trust is charitable is to be sought in the competence of the intervention of the Attorney-General on behalf of the King as *parens patriae*. Quoting from *Tyssen on Charitable Bequests*, Lord Simonds observes that the determination of what are and are not charitable objects is the duty of the Court of Chancery (acting on the principles briefly summarised above), and that from time to time it may be the duty of that Court to decline to regard as charitable a purpose to which in an earlier age that quality would have been ascribed.

All this I need hardly say I unreservedly accept. But the question is how the Court of Session can invest itself with the unique attributes, traditions and duties of the Chancery Division and with a competent knowledge of the English law of charitable trusts with a view to performing a function which belongs to a different system of law by reference to a "crucial test" which has no counterpart in Scots law or practice. In the fiscal cases relating to charities which have so far occurred in Scotland this issue has proved capable of evasion or has been passed by in silence, though it nearly became critical in *Jackson's Trustees*, 1926 S.C. 579(1), in which the Lord Ordinary sharply raised the point. In the present case I cannot see how it can be evaded. We are invited for the first time to deal with a type of enterprise which has never previously come before the Courts in either country, and which would seem to afford scope for the typical exercise of the special function of the Chancery Division; and the Respondents have in terms urged us that it is our duty to apply English law and English law alone, and to follow unquestioningly certain decisions in the Chancery Division (a statement which has the support of the latest Scottish textbook, *Encyclopaedia of the Laws of Scotland*, Supplement Vol. s.v. "Income Tax") and to expand the analogy which in their view these decisions afford so as to harmonise with the social outlook of 1951. English law for us is a question of fact. It seems to me that it would be as improper for us to criticise the English decisions laid before us as it would be inconsistent with our position as a Scottish Court administering only Scots law to accept and apply doctrines of foreign law otherwise than as inferences in fact. I therefore see no alternative to refusing this appeal, solely upon the ground that the Special Commissioners had material before them to warrant their decision. Whether they were right in law I do not know, and am not qualified to say. In substance the question put to us is: What would the Chancery Division do in this case? and that is not a question of law for a Scottish Court.

This Court has always endeavoured, and will always endeavour, to yield unquestioning obedience to the decisions of the House of Lords and also to execute faithfully all statutory jurisdictions confided to us. But in this instance we are presented with a painful dilemma from which only legislation can afford an escape by a definition of "charity" capable of application by both Scottish and English Courts, unless it is to be accepted either that no effective appeal lies in a Scottish case of this type to any court short of the House of Lords, or else that all such Scottish appeals should be taken to the Chancery Division and not to the Court of Session. The adoption of the latter expedient would of course be a direct violation of Article XIX of the Treaty of Union.

(1) 10 T.C. 460.

The Crown having appealed against the above decision the case came before the House of Lords (Lords Normand, Oaksey, Morton of Henryton, Reid and Cohen) on 2nd, 3rd and 4th February, 1953, when judgment was reserved. On 9th March, 1953, judgment was given in favour of the Crown (Lord Oaksey dissenting).

The Lord Advocate (Mr. J. N. Clyde, Q.C.), Mr. J. H. Stamp, Sir Reginald Hills and Mr. W. R. Grieve appeared as Counsel for the Crown and Mr. J. O. M. Hunter, Q.C., Mr. W. M. Hunt and Mr. W. I. R. Fraser for the Association.

Lord Normand.—My Lords, the question in this appeal is whether the Respondent Association is a body of persons established "for charitable purposes only". If so, it is agreed that the profits of a trade, namely the holding of annual athletic sports, carried on by them, will be exempt from Income Tax under Schedule D, by virtue of Section 30 (1) (*c*) of the Finance Act, 1921, as amended by Section 24 of the Finance Act, 1927.

I will first summarise the facts found in the Case stated by the Special Commissioners. Before 1938 there were various clubs connected with the City of Glasgow Police. In February, 1938, they were merged in the Respondent Association, which was established at that time in order to co-ordinate the various athletic and sporting activities of the members of the police force. Attention must be drawn to certain excerpts from the general rules of the Association:

> "*Rule* 2. Objects.—The objects of the Association shall be to encourage and promote all forms of athletic sports and general pastimes.
>
> *Rule* 3. Officers.— . . . The Chief Constable shall be President and the Assistant Chief Constables and Superintendents of the Force shall be Vice-Presidents.
>
> *Rule* 4. Management.—The Management of the Association shall be vested in an Executive Committee, Divisional activities by a Divisional Committee, and each branch of sport or pastime by a Sectional Committee . . .
>
> *Rule* 5. Committees.—(1) Executive Committee.—The Executive Committee shall consist of the President, two Vice-Presidents, one representative from each Divisional Committee, one representative from each Sports Sectional Committee, the Hon. General Secretary and the Hon. Treasurer, ten to form a quorum. (2) Divisional Committees.—The Annual General Meeting of each Division shall be held in the second week of September . . . The business to be transacted at such meetings shall be . . . (*b*) to elect the Divisional Committee, consisting of Superintendent, Lieutenant, Inspector, two Sergeants and five Constables.
>
> *Rule* 8. Membership.—Ordinary membership shall be restricted to Officers and Ex-Officers of the City of Glasgow Police Force.
>
> *Rule* 10. Subscriptions.—The subscription for each serving member shall be 3d. per week . . .
>
> *Rule* 21. Alteration of Rules.—None of the foregoing Rules shall be altered or revoked save by a two-thirds majority of those present at the Annual General Meeting or at a Special Meeting called for the purpose.
>
> *Rule* 23. Sanction of Chief Constable.—All resolutions and decisions passed at all meetings of the Association are subject to the approval of the Chief Constable."

Membership of the Association was, until 1947, a condition of service for all new entrants into the Glasgow Police Force. In 1948 membership became voluntary, but in fact all recruits have continued to join the Association. The present membership is about 85 per cent. of the force, and there were in September, 1950, nine ex-officers who retained their membership. Ex-officers can render useful services as coaches. The activities of

(Lord Normand.)

the Association include angling, athletics, badminton, billiards, bowling, boxing and wrestling, cricket, association football, golf, rugby football, shooting, swimming and training in life saving, table tennis, dances, 'bus runs, "mystery tours" by 'bus, and whist drives. Sports are held in May of each year as a preparation for the annual sports, the "trade" carried on by the Association for the purpose of raising funds. These annual sports are held on the ground of an amateur association football club, the use of which is given without charge. There is an attendance of about 50,000 people, who pay for entry, and the profits are applied solely to the purposes of the Association. Some events are confined to members of the Association, others to members of other police clubs in Great Britain. But the majority of the events are open to all amateurs, including members of the Association. Efforts are made to have some outstanding competitors to attract the public. The members of the Association control the sports, the spectators and the traffic, and no charge is made for their services. The net proceeds are paid into the general fund of the Association. In the year ended 30th September, 1950, the total revenue of the Association was £2,778, of which £1,225 was derived from members' subscriptions and £1,214 from profits of the annual sports. The Association is affiliated to the Police Athletic Association, a body whose rules are approved by the Home Secretary and the Secretary of State for Scotland, and whose objects are to encourage the development of all forms of amateur sport in the police forces and to promote and control suitable competitions and championships. The relations between the Respondent Association and the Glasgow police force are close, and the Association is regarded as an essential part of the police organization. It plays a valuable part in maintaining health, morale and *esprit de corps*. It helps to bring the force into friendly contact with the public, and it enables the members of the Association to mix with members of other professions and trades. The hours of police duty make it almost essential that some special provision should be made for the recreation of the police. The activities of the Association are thus conducive to a contented, fit and efficient police force; they are a help towards recruiting, and to the promotion of good relations with the public. By these means, also, the Association has directly benefited the public.

The Special Commissioners, having found these facts, rejected the only contention then put forward on behalf of the Crown that, by reason of the wide nature and extent of the objects of the Association, it was not a body of persons established for charitable purposes only. They were aided in arriving at this conclusion by such cases as In re *Good*, [1905] 2 Ch. 60 and In re *Gray*, [1925] 1 Ch. 362. As I shall not have occasion to refer to these cases again I will say now that so far as they are founded on the principle that gifts exclusively for the purpose of promoting the efficiency of the armed forces are good charitable gifts, they are, in my opinion, unassailable, but that the decision that the actual gifts were of that nature is more doubtful. I would hold further that gifts or contributions exclusively for the purpose of promoting the efficiency of the police forces and the preservation of public order are by analogy charitable gifts.

The Stated Case came before the First Division of the Court of Session. Their Lordships did not address themselves to a discussion and decision of the question of law submitted for their opinion,

> "whether the City of Glasgow Police Athletic Association is, within the meaning and for the purposes of Section 30 of the Finance Act, 1921 (as amended by Section 24 of the Finance Act, 1927), a charity, namely a body of persons established for charitable purposes only".

(Lord Normand.)

The Lord President pointed out that *Pemsel's* case(1) decided that the words "charity" and "charitable" in the Income Tax Act, 1842, must be construed in their technical meaning according to English law. The words which have to be construed under the Acts now in force are the same. *Pemsel's* case also disapproved of *Baird's Trustees*, 15 R. 682, in which Lord President Inglis had held that the words "charitable purposes" in the Act of 1842 were to be interpreted in their popular signification as meaning the relief of poverty. Plainly, *Pemsel's* case laid down the rule for construing "charity" and "charitable" as one to be observed both by the Courts in England and by the Court of Session. The advantage for Scottish taxpayers of this rule over the construction accepted in *Baird's Trustees* is obvious and considerable. The Lord President proceeds to say that the general law of charities has progressed in England and Scotland since *Pemsel's* case was decided and that there is a considerable and growing divergence. His conclusion is that the Court of Session cannot invest itself with the unique attributes of the Chancery Division or perform the functions which belong to the system of law there administered and that the difficulty in which the Court of Session finds itself, hitherto evaded, must now be faced. His solution of the problem is that the English law of charities is foreign law and a matter of fact for the Court of Session, and therefore that the only course open to him was to take the determination of the Special Commissioners as a finding of fact for the Scottish Courts. With this mode of disposing of the Stated Case the other members of the Court agreed. They professed a sense of incapacity to deal with the case in any other way.

My Lords, I will not disguise that I have a certain sympathy with the Scottish judges, who feel embarrassed at having to administer as part of the law of Scotland a difficult and technical branch of English law. For I have had in the Court of Session, some, though not a large, experience of this jurisdiction, and I felt embarrassment. Nevertheless I must at once say that there has been here a failure to exercise a jurisdiction which the Court had a plain duty to exercise.

My Lords, in *Pemsel's* case(1), it was decided authoritatively that it was part of the jurisdiction of the Court of Session as Court of Exchequer in Scotland to administer this branch of English law in claims for exemption by charities. Since then the Finance Act, 1925, Section 19, has provided that claims for exemption by charities were in future to be made to the Commissioners of Inland Revenue and were to be determined by the Special Commissioners in like manner as an appeal made to them against an assessment under Schedule D, and that all the provisions of the Income Tax Acts relating to such an appeal (including the provisions relating to the statement of a Case for the opinion of the High Court on a point of law) shall apply accordingly with any necessary modifications. For Scottish subjects the appeal on law is, of course, to the Court of Session (Income Tax Act, 1918, Section 235 and Section 149 (3)). The Court of Session has, therefore, a statutory duty to decide any question of law that may come before it in a claim to exemption, and the law which it must administer is the English law of charities.

The necessary effect of *Pemsel's* case and now also of the provisions of Section 19 of the Act of 1925 is that the English law of charity has, for Income Tax purposes and for them alone, to be regarded as part of the law of Scotland and not as a foreign law. The practical difficulties for a Scottish lawyer are considerable, but I would not have them exaggerated. These

(1) 3 T.C. 53.

difficulties spring mainly from the nature of charity and from the way in which the law of charity has grown up. I need not enlarge on this for it is an aspect of the English law which has been recently sufficiently commented on with special authority by Lord Simonds, as he then was, in *Gilmour* v. *Coats and others,* [1949] A.C. 426, at page 449 and in *Oppenheim* v. *Tobacco Securities Trust Company, Ltd.,* [1951] A.C. 297, at page 307. I venture, however, to say that many of the difficulties felt by Scottish lawyers in administering this law are scarcely less felt by English equity lawyers, and that the general Scots law of charities likewise has difficulties of its own. It has never yet, for example, been found possible to define in generally accepted terms what is the precise meaning of charity in Scottish law, and one reason is that the Scots law of charities owes nothing to the great institutional writers, and much of it, like its counterpart in England, has been built up piecemeal by the decisions of the Courts.

The duty of the Court of Session to apply the English law of charities in Income Tax cases has been expressly recognised in *Jackson's Trustees,* 1926 S.C. 579(1), by Lord President Clyde and Lord Sands. In that case the limits of the rule were defined. It was also recognised and applied in *Trustees for the Roll of Voluntary Workers* v. *Commissioners of Inland Revenue,* 1942 S.C. 47(2). Among the consequences of the action taken by the First Division in this case is to cast some doubt on these cases and to deprive Scottish claimants of an effective right to appeal from the determination of the Commissioners.

In certain respects the jurisdiction is less embarrassing than their Lordships seem to have supposed. They are technically not bound by the decisions of the English Courts in the matter of charities and it is not improper for them to discuss or criticise English decisions. The Court of Session is not reduced to the role of an obsequious follower of decisions either of a judge of first instance or of the Court of Appeal, though it is only good sense to pay special regard and respect to the decisions and opinions pronounced by the English Courts on a branch of the law built up by English judges, and familiar to them by long training and experience.

I come now to the merits of the appeal and I unfeignedly regret that I must do so without the aid of the opinions of the learned Judges of the First Division, especially as the issue, though not easy, owes none of its difficulty to technicalities of English law. The Respondents' contention is that the Association falls within the last category of Lord Macnaghten's classification of charities(3), and that it is established for charitable purposes only. In looking for the purposes for which it is established I begin with the rules. The objects set out in rule 2, to encourage and promote all forms of athletic sports and general pastimes, are not charitable purposes. But it will not do to stop there. The next step is to notice that the members' subscriptions are exclusively spent on their own sports and recreations. In order to augment the fund expendable for these purposes the members carry on the trade of holding the annual sports. So far, again, there is no element of charity and the purposes are self-regarding. In In re *Hobourn Aero Components, Limited's Air Raid Distress Fund,* [1946] Ch. 87, voluntary collections from employees of the munition factories belonging to a certain company were to be used to relieve without a means test the distress suffered by the employees from air raids. It was held by Cohen, J., as he then was,

(1) 10 T.C. 460. (2) 24 T.C. 320. (3) 3 T.C. 53 at p. 96.

(Lord Normand.)

that this was not a charity, and this decision was affirmed by the Court of Appeal ([1946] Ch. 194). Lord Greene, M.R., said (p. 200):

> "The point to my mind which really puts this case beyond reasonable doubt is the fact that a number of employees of this company, actuated by motives of self-help, agreed to a deduction from their wages to constitute a fund to be applied for their own benefit without any question of poverty coming into it. Such an arrangement seems to me to stamp the whole transaction as one having a personal character, money put up by a number of people, not for the general benefit, but for their own individual benefit."

Morton, L.J., as he then was, said (p. 209):

> "Those eligible to receive benefits were not even all the employees of the particular company. They were those who chose to join in the scheme".

In *Oppenheim*(1), Lord Simonds expressed his full agreement with all that was said by Lord Greene, M.R., and Morton, L.J., in *Hobourn*. The case is an authority against recognising as a charity a body that merely applies the subscriptions of its members to their own recreation. It does not of course prejudice the question whether in certain circumstances the benefit of members is not subsidiary and incidental to another and charitable purpose.

It would be unjust to the Respondent Association to represent it as having no purpose beyond the recreation and amusement of the individual subscribers constituting its membership. No one can read the rules without perceiving that the Association was regarded as having an official importance and a public aspect. And in order to ascertain what the purposes of an association are, the Court is not limited to consideration of its rules or its constituent documents. They are very important, and it would be difficult for an association to say that something declared in its rules to be its object was not one of its purposes. But it is quite in order for the association to prove by parole evidence that it had other purposes than that set down in the rules. The Special Commissioners had evidence before them which entitled them to find that, among its purposes, were the encouragement of recruiting, the improvement of the efficiency of the force, and the public advantage. This is a purpose which the Special Commissioners were entitled to hold in law to be a public charitable purpose. But there remains the non-charitable purpose of providing recreation to the members. The question is, whether this non-charitable purpose is incidental to the public charitable purpose. If not, it cannot be said that the Association was a body established for charitable purposes only. This is not a matter of the motive of the members of the Association or of the high police officials who took a part in furthering the Association, though there is a natural probability that their motives agree with the purposes of the Association. The question is: What are the purposes for which the Association is established, as shown by the rules, its activities and its relation to the police force and the public? And what the Respondents must show in the circumstances of this case is that, so viewed objectively, the Association is established for a public purpose, and that the private benefits to members are the unsought consequences of the pursuit of the public purpose, and can, therefore, be disregarded as incidental. That is a view which I cannot take. The private benefits to members are essential. The recreation of the members is an end in itself, and without its attainment the public purpose would never come into view. If the result of establishing the Association had been that the members had, instead of being interested, found themselves involved in wearisome and lifeless activities, their efficiency would have suffered, the membership would

(1) [1951] A.C. 297.

have fallen off, and there would have been public detriment instead of public benefit. The private advantage of members is a purpose for which the Association is established, and it therefore cannot be said that this is an Association established for a public charitable purpose only. In the *Yorkshire Agricultural Society's* case, [1928] 1 K.B. 611(1), Atkin, L.J., considered (p. 631) the problem of societies having more than one purpose. He says(2):

> "First of all it is said: No, this Society was in fact formed for the purpose of giving benefit to its members; it is nothing but a club for the mutual advantage of the members of the club. If that were so, I agree that the claim of the Society would fail, both because it could not be said that the Society was established for a charitable purpose, and because it certainly could not be said that it was established for a charitable purpose only. There can be no doubt that a society formed for the purpose merely of benefiting its own members, though it may be to the public advantage that its members should be benefited by being educated or having their aesthetic tastes improved or whatever the object may be, would not be for a charitable purpose, and if it were a substantial part of the object that it should benefit its members I should think that it would not be established for a charitable purpose only. But, on the other hand, if the benefit given to its members is only given to them with a view of giving encouragement and carrying out the main purpose which is a charitable purpose, then I think the mere fact that the members are benefited in the course of promoting the charitable purpose would not prevent the society being established for charitable purposes only."

In principle, therefore, if an association has two purposes, one charitable and the other not, and if the two purposes are such and so related that the non-charitable purpose cannot be regarded as incidental to the other, the association is not a body established for charitable purposes only.

I would allow the appeal.

Lord Oaksey.—My Lords, I agree with what has been said by the noble Lord on the Woolsack as to the function of the Court of Session in tax cases.

On the merits of the appeal I have had much difficulty, and have come to the conclusion that the appeal ought to be dismissed.

In my opinion, the efficiency of a police force is largely dependent upon the activity and physical fitness of its members, and athletic and other sports ought to be and are encouraged by those responsible for such forces. It is clear, too, that the efficiency of the police is a matter of public importance which falls within the class of charitable purposes to which the exemption in Section 30 of the Income Tax Act, 1918, applies. The question then is whether the City of Glasgow Police Athletic Association is a body of persons established for public charitable purposes only.

Now it is clear that " purposes " are not the same as " results " and there is ample authority that a body of persons or trust may be established for charitable purposes only although its establishment has results which are not charitable, for instance, the benefits derived by the officers in the cases In re *Good*, [1905] 2 Ch. 60, In re *Gray*, [1925] 1 Ch. 362, and by the surgeons in the *Royal College of Surgeons of England* v. *National Provincial Bank*, [1952] A.C. 631. As Lord Macnaghten said in *Commissioners of Inland Revenue* v. *Forrest* (*Secretary of the Institution of Civil Engineers*), 15 A.C. 334, at p. 354(3):

> "It cannot I think be doubted that the Institution has raised the standard of the profession, and that to a civil engineer it is of advantage and probably

(1) 13 T.C. 58. (2) *Ibid.*, at p. 76. (3) 3 T.C. at p. 131.

(Lord Oaksey.)

> of pecuniary advantage to be a member. But is that result the purpose of the Society, or is it an incidental, though an important and perhaps a necessary consequence of the way in which the Institution does its work in the pursuit of science? "

The purposes for which a body of persons is established can only be discovered from the constitutional document, if there is one, which establishes the body.

In the present case, in my opinion, the constitution and general rules of the Respondents indicate that the purpose of the body was the efficiency of the force. There can, in my opinion, have been no other reason for rule 23 which makes every resolution and decision subject to the approval of the Chief Constable. The Chief Constable is only concerned with the amusement of his men for the purpose of having a contented and efficient Force. All the rules are framed to meet the needs of a disciplined force. It is, in my opinion, impossible to imagine that such rules would have been drawn up by anyone or any body of men who were not intending to promote discipline. Decisions are not confided to the majority or even to an unanimous vote, but to the Chief Constable.

It is true that no one need belong to the Association, but that is equally consistent with it being the view of the Chief Constable or other authority who devised the scheme, which was originally compulsory, that a voluntary scheme was from its nature more likely to create keenness and *esprit de corps* which have the necessary result of efficiency.

The matters to which I have referred are all found as facts by the Special Commissioners in para. II (10) and (13) and para. V of the Special Case.

It has been argued for the Crown that the Association is nothing but a club or mutual society for the benefit of the subscribers, but, in my opinion, the Chief Constable's veto is absolutely inconsistent with any such idea.

It is true that the money subscribed comes from the members and is used for their immediate benefit, and it is argued that this negatives the idea of any public charitable purpose, but, in my opinion, it is not any more a necessary inference that the purpose of the members was their own enjoyment than that their purpose was their own efficiency. The purposes of a body of persons can only be inferred from the facts as to their association as a body ; some may have one purpose, others another ; but when they all submit themselves to the dictation of their commanding officer it appears to me that the reasonable inference is that they are prepared to subordinate their private purposes to his and that his purpose must be inferred to be the efficiency of the force and not its amusement.

Lord Morton of Henryton.—My Lords, the only question arising for decision on this appeal is whether the Respondent Association is a " body of persons . . . established for charitable purposes only " within the meaning of Section 30 (3) of the Finance Act, 1921. If the Association is such a body, it is not disputed that the profit of £1,214 resulting from its annual amateur sports meeting, held during the year ending 30th September, 1950, is exempted from Income Tax by Section 30 (1) (*c*) of the Finance Act, 1921, as amended by Section 24 of the Finance Act, 1927.

The facts as to the establishment of the Association are set out in paragraph II (1) of the Case Stated as follows:—

> " Prior to 1938 there were various clubs connected with the City of Glasgow Police. In February 1938 these clubs were merged in the Association

which was established at that date with the purpose of co-ordinating the various athletic and sporting activities of the members of the police force."

Starting from this point, I have carefully considered the constitution and general rules of the Association, and the facts as to its activities which are set out in the Case Stated, and I am quite unable to hold that this body of persons is established for charitable purposes only.

Rule 2 provides that

"The objects of the Association shall be to encourage and promote all forms of athletic sports and general pastimes."

It was accepted by the Special Commissioners, and it is not disputed by the Respondent Association, that these objects, stated in such general terms, are not objects which the law regards as charitable. It is rightly said, however, that the constitution and rules must be read as a whole and construed in the light of such evidence of surrounding circumstances as may be admissible. So reading them and so construing them I arrive at the conclusion that the purpose for which the Association is established is to provide for its members and their friends facilities for taking part in athletic sports and general pastimes, both out-door and in-door. I cannot detect in this purpose any element of charity. The members pay their subscriptions and get certain benefits in return; they make a profit by running the annual amateur sports meeting already mentioned, and that profit is applied to carrying out the purpose which I have just stated. So far, the Association would not appear to be any more a charity than is any other athletic or social association or club established for the like purpose. The Association does not, in my view, fit into any of the four "principal divisions" mentioned by Lord Macnaghten in *Pemsel's* case, [1891] A.C. 531 at page 583(1), and the purpose just stated is far indeed from the "spirit and intendment" of the preamble to the statute 43 Eliz. c. 4.

Counsel for the Respondent Association rely strongly upon the facts found in paragraph V of the Special Case and especially upon sub-paragraph (*f*) which is as follows:—

"(*f*) The existence and activities of the Respondent Association:—

(*i*) played an important part in the maintenance of physical fitness, health, morale, and *esprit de corps* within the force,

(*ii*) attracted recruits to the force,

(*iii*) helped to maintain the strength and efficiency of the force, by conducing to a contented force, keeping members happy in their work and inducing them to continue in the force, rather than leave it,

(*iv*) conduced to the public order by promoting good relations between the force and the general public,

(*v*) increased the efficiency of the force, generally, and thereby directly benefited the public."

They contend that the achievement of the results just stated is the purpose for which the Association is established, and that this is a charitable purpose. I do not doubt, my Lords, that a gift made for the sole purpose of increasing the efficiency of the police force would be a charitable gift, but the task before your Lordships is, first, to determine the purpose or purposes for which the Association is established, and then to determine whether the sole purpose, or all the purposes, are charitable. In my view, the purpose for which the Association is established, within the meaning of Section 30 (3) of the Finance Act, 1921, is the non-charitable purpose

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

(Lord Morton of Henryton.)

which I have already stated and the achievement of the results set out in paragraph V is simply a consequence which will follow if the purpose for which the Association is established is carried out successfully and efficiently.

Even if I were satisfied that there exists some other purpose for which the Association was or is established, for instance, the purpose of maintaining the strength and efficiency of the police force, I should find it impossible to say that the *sole* purpose of the Association is a purpose which is nowhere even mentioned in the constitution and general rules, and that the purpose which emerges so clearly in the rules, and upon which the income of the Association appears to have been expended ever since it came into existence, is either non-existent or merely incidental.

Observations have been made by my noble and learned friend on the Woolsack as to the course which this case took in the First Division of the Court of Session. I agree with these observations and do not desire to add to them. I agree also with my noble and learned friend's comments upon the cases of In re *Good*, [1905] 2 Ch. 60, In re *Gray*, [1925] 1 Ch. 362, and In re *Hobourn Aero Components Limited's Air Raid Distress Fund*, [1946] Ch. 87.

I would allow the appeal.

Lord Reid.—My Lords, the Respondents claim that they are entitled to exemption from Income Tax under Section 30 of the Finance Act, 1921, as amended by Section 24 of the Finance Act, 1927. It is admitted that if they are "a body of persons . . . established for charitable purposes only" they are entitled to exemption, the other requirements of the section being satisfied.

The Respondents' Association was formed in 1938, apparently under official guidance. From then until 1947 membership of the Association was a condition of service for all new entrants to the Glasgow police force. Compulsory membership was abolished in 1947, but it appears that all new entrants since that date have in fact become members. Membership is restricted to officers and ex-officers of the force; only a few ex-officers remain members and they give valuable service in coaching other members. Under the rules the management of the Association is largely in the hands of senior officers of the force, and all resolutions passed at meetings of the Association are subject to the approval of the Chief Constable.

The objects of the Association, set out in rule 2, are to encourage and promote all forms of athletic sports and general pastimes, and later rules show that this means to provide facilities for the members to take part in those activities and to encourage them to do so. The Special Commissioners have found that the Association is regarded as an essential part of the police organisation, that it plays an important part in the maintenance of health, morale and *esprit de corps* within the police force, that it attracts recruits to the force and that it helps to induce members of the force to continue in the force rather than leave it. Those findings amply justify the conclusion that the existence and activities of the Association increase the efficiency of the force generally and thereby directly benefit the public.

I do not doubt that the purpose of increasing or maintaining the efficiency of a police force is a charitable purpose within the technical meaning of those words in English law. It appears to me to be well established that the purpose of increasing the efficiency of the Army or a part of it is a charitable purpose. It may be that in some cases the facts hardly justified the conclusion that this was the purpose of the gift in question,

but that does not affect the principle. I can see no valid distinction between the importance or character of the public interest of maintaining the efficiency of the Army and that of maintaining the efficiency of the police.

But it is not enough that one of the purposes of a body of persons is charitable: the Act requires that it must be established for charitable purposes only. This does not mean that the sole effect of the activities of the body must be to promote charitable purposes, but it does mean that that must be its predominant object and that any benefits to its individual members of a non-charitable character which result from its activities must be of a subsidiary or incidental character.

It was argued that this Association could not be regarded as established for charitable purposes because its revenue is all spent on activities in which its members alone take part. I am not satisfied that in every case that would be enough by itself to prevent the body from being held to be established for charitable purposes only, and I prefer to base my opinion on the facts of this case.

The peculiarity of this case is that the same activities have a double result. They are beneficial to the public by increasing the efficiency of the force and they are beneficial to the members themselves in affording to them recreation and enjoyment; and all the relevant facts appear to me to indicate that the purpose was to produce this double result. It may well be that considerations of public interest were the primary cause of the Association being established and maintained: but I think that it is clear that all or most of the activities of the Association are designed in the first place to confer benefits on its members by affording to them recreation and enjoyment. It is only as a result of these benefits that the purpose of increasing the efficiency of the force is achieved. In some cases where the end is a charitable purpose the fact that the means to the end confer non-charitable benefits may not matter; but in the present case I have come to the conclusion that conferring such benefits on its members bulks so largely in the purposes and activities of this Association that it cannot properly be said to be established for charitable purposes only. I therefore agree that the appeal should be allowed.

There is one other matter that I must notice. The First Division have held that they are not competent to decide what is a charitable purpose because that is purely a question of English law. In this I think that they were mistaken. It has commonly been accepted since *Pemsel's* case, [1891] A.C. 531(1) that the words "charity" and "charitable" in Income Tax legislation must be interpreted according to English law, but I do not think that that is a full or accurate statement of the position. In my judgment, holding that those words must be interpreted according to English law must mean that it is to be held that Parliament enacted that on that matter the law of England should also become the law of Scotland and it must follow that Parliament must be held to have placed on the Courts of Scotland the duty of administering what was formerly only the law of England but what has been made by Act of Parliament the law of both countries. It is true that this form of legislation by reference puts the Scottish Courts in some difficulty, because it may not always be easy for them to discover what are the principles to be applied in a particular case—incidentally that is not always easy even for an English Court. But whatever the practical difficulties may be, and whether or not those difficulties

(1) 3 T.C. 53.

(Lord Reid.)

were ever appreciated by Parliament or by this House in determining what Parliament must be held to have enacted, the fact remains that Parliament must be held to have required the Scottish Courts to surmount those difficulties, and the duty so placed on the Scottish Courts can now only be removed by legislation.

Lord Cohen.—My Lords, the question at issue in these proceedings is whether the Respondent Association is a "body of persons . . . established for charitable purposes only" and is therefore entitled to exemption under Section 30 of the Finance Act, 1921, as amended by Section 24 of the Finance Act, 1927. The Special Commissioners answered this question in favour of the Association but stated a Case at the instance of the Appellants, the question for the decision of the Court being framed as follows:

> "The question of law for the opinion of the Court is whether the City of Glasgow Police Athletic Association is, within the meaning and for the purposes of Section 30 of the Finance Act, 1921 (as amended by Section 24 of the Finance Act, 1927), a charity, namely a body of persons established for charitable purposes only."

The First Division of the Court of Session answered this question in the affirmative. They arrived at their conclusion by treating the question as one of fact, on the ground that your Lordships' House had held in *Pemsel's* case, [1891] A.C. 531(1), that the question whether a body of persons was a charity for the purposes of the Income Tax Acts fell to be determined according to English law and that English law in a Scottish Court was a question of fact. Mr. Hunter, for the Association, did not attempt to support that line of reasoning, and I have nothing to add to what has been said by my noble and learned friend on the Woolsack on this aspect of the question. I turn, therefore, to the question stated by the Special Commissioners.

They based their conclusion in favour of the Respondent Association in substance on the decisions in the Chancery Division in the cases of In re *Good*, [1905] 2 Ch. 60 and In re *Gray*, [1925] 1 Ch. 362. In both those cases the question at issue was the validity of a gift contained in the will of a testator, the gift in the former case being of a library and plate for an officers' mess and in the latter of a fund for the promotion of sport in a regiment. The *ratio decidendi* of the two cases is conveniently stated by Farwell, J., in In re *Good*, (see p. 66), in the passage cited by the Special Commissioners, which reads as follows:—

> "I have come to the conclusion that this is a good charitable gift on the first ground—namely, that it is a direct public benefit to increase the efficiency of the Army, in which the public is interested, not only financially, but also for the safety and protection of the country."

The Commissioners then observed that the increase of the efficiency of police forces appeared to them analogous to the increase of the efficiency of the Army, and on this ground decided in favour of the Association. They omitted, however, to notice that they were not concerned with the question whether a gift for the promotion of efficiency in the police force was a valid charitable gift but with the different question whether the Respondent Association was formed for charitable purposes only.

This question has to be determined upon the construction of the constitution and rules of the Association and of the findings of fact contained in the Stated Case, but before I turn to them it will be convenient to refer briefly to some of the authorities to which your Lordships' attention was directed in the course of the argument. From them certain principles appear to be settled:—

(1) 3 T.C. 53.

(Lord Cohen.)

(1) If the main purpose of the body of persons is charitable and the only elements in its constitution and operations which are non-charitable are merely incidental to that main purpose, that body of persons is a charity notwithstanding the presence of those elements—*Royal College of Surgeons of England* v. *National Provincial Bank,* [1952] A.C. 631.

(2) If, however, a non-charitable object is itself one of the purposes of the body of persons and is not merely incidental to the charitable purposes, the body of persons is not a body of persons formed for charitable purposes only, within the meaning of the Income Tax Acts—*Oxford Group* v. *Inland Revenue Commissioners,* [1949] 2 All E.R. 537.(1)

(3) If a substantial part of the objects of the body of persons is to benefit its own members, the body of persons is not established for charitable purposes only—*Inland Revenue Commissioners* v. *Yorkshire Agricultural Society,* [1928] 1 K.B. 611.(2) The distinction between this class of case and that contemplated in the first principle I have stated is aptly pointed out by Atkin, L.J., in the case last cited, when he says at page 631:

> "There can be no doubt that a society formed for the purpose merely of benefiting its own members, though it may be to the public advantage that its members should be benefited by being educated or having their aesthetic tastes improved or whatever the object may be, would not be for a charitable purpose, and if it were a substantial part of the object that it should benefit its members I should think that it would not be established for a charitable purpose only. But, on the other hand, if the benefit given to its members is only given to them with a view of giving encouragement and carrying out the main purpose which is a charitable purpose, then I think the mere fact that the members are benefited in the course of promoting the charitable purpose would not prevent the Society being established for charitable purposes only."

With these principles in mind I turn to the constitution and rules of the Respondent Association.

Rule 2 declares the objects of the Association to be

> "to encourage and promote all forms of athletic sports and general pastimes."

It was common ground between the parties that if this object had to be considered *in vacuo* it would not be a good charitable purpose, but Mr. Hunter argued, and I think rightly, that, read in its context, it must be limited to the promotion of sports and pastimes among the Glasgow police; not, however, as I read the document, all the Glasgow police, but only such of them and such ex-members of the Glasgow police as become and remain members of the Association. So limited, said the Lord Advocate and Mr. Stamp, for the Appellants, the Association is merely a private club and the observations of Lord Greene, M.R., in In re *Hobourn Aero Components Limited's Air Raid Distress Fund,* [1946] Ch. 184, were in point. In that case at page 203 Lord Greene after citing a passage from *Tudor on Charities,* 5th ed., p. 18, said the particular association of persons with which the Court was there concerned could properly be described as a mutual benefit society, which could not be charitable unless poverty is an essential qualification for participation in the benefits.

There is no element of poverty to be found in the present case. Therefore, said the Lord Advocate, the Respondent Association is stamped with the character of a private trust.

Mr. Hunter and Mr. Hunt did not dispute the correctness of that decision, but argued that in the present case the purpose of the Association was to maintain the strength and the efficiency of the Glasgow police force and the benefits to the membership of the Association were merely incidental to that purpose.

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(1) 31 T.C. 221. (2) 13 T.C. 558.

(Lord Cohen.)

Mr. Hunter relied on the findings of the Commissioners as expressed in para. V of the Case Stated as establishing the correctness of this contention. He relied also on the following rules :—

Rule 3, giving the superior officers of that force strong representation on the executive committee and the divisional committees ;

Rule 10, providing for deduction of serving members' subscriptions from their pay ; and above all

Rule 23, giving the Chief Constable a power of veto on all resolutions and decisions passed at meetings of the Association.

He referred also to the finding that the sports meetings of the Association received specially favourable treatment in that no charge was made for the services of the police in connection therewith. It is, I think, a fair inference from these matters and from other evidence that was before the Commissioners that the Association was regarded by the authorities as an essential part of the police organisation and as playing an important part in the maintenance of health, morale, and *esprit de corps* in the police force : but the achievement of this end was more the result of the operations of the Association than an achievement of its purpose, and I am unable to draw from the evidence the conclusion that the benefits to the members were given with a view *only* to giving encouragement to the maintenance of the strength and efficiency of the Glasgow police force. These benefits were and could be given to the members and to no one else. Reading the Case Stated and the documents annexed thereto I am forced to the conclusion that the conferment of those benefits was a substantial part of the objects of the Association. In my opinion, therefore, the Association cannot be said to have been established for a charitable purpose only. I agree that the appeal should be allowed.

Mr. W. M. Hunt.—May it please your Lordships, I anticipate this is the moment at which I ought to inform your Lordships that a special arrangement has been made about the costs of this appeal. The appeal is a test case, not involving very large sums, and the Commissioners of Inland Revenue have agreed that in any event they would pay the costs, as between solicitor and client, of the Respondents in this appeal and would not seek to interfere with the Order of the Court below as to costs. I think Sir Reginald Hills would agree with that.

Sir Reginald Hills.—That has been agreed, my Lords.

Lord Normand.—Thank you.

Mr. Hunt.—If your Lordship pleases.

Questions Put :

That the Interlocutor appealed from be reversed, except in regard to expenses.

The Contents have it.

That the question of law in the Case Stated be answered in the negative.

The Contents have it.

That the Appellants do pay to the Respondents their costs of the appeal to this House, such costs to be taxed as between solicitor and client.

The Contents have it.

[Solicitors—Solicitor of Inland Revenue (England) for Solicitor of Inland Revenue (Scotland) : Wedlake, Letts & Birds for Rob, Walker & Orr and A. & W. M. Urquhart.]

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