1959 *Present :* **Basnayake, C. J., and Pulle, J.**

C. A. FERNANDO *et al.*, Appellants, *and* T. N. I. SIVASUBRAMANIAM AIYER, Respondent

S. C. 444 A–B—D. C. Jaffna, 173/L

Charitable trust—Applicability of English law—Hindu religious trust—Interpretation of expressions such as " madam ", " abishekam ", " neivethiam ", " Duwadesi ", —Trusts Ordinance (Cap. 72), ss. 2, 99 (1) (c), 99 (4).

If a trust is claimed to be charitable and it falls within one or other of the categories specified in section 99 (1) of the Trusts Ordinance, no principle of English law relating to charities is admissible to show that it is not a charitable trust.

Per PULLE, J.—(i) In determining whether an instrument has created a Hindu religious trust for the maintenance of religious rites and practices within the purview of section 99 (1) (c) of the Trusts Ordinance, provisions relating to the feeding of Brahmins on " Duwadesi " days and to the assignment of a " madam " for that purpose, and expressions such as " abishekam " and " neivethiam ", must be interpreted in the context of the religious beliefs of the person who executed the deed. For such purpose, admissions made by the trustees in previous actions concerning the trust are relevant. (ii) If a place is constituted as a " madam ", it is for those who accept the trust to do what is necessary to make it a place of worship and pilgrims' rest. A continuous breach of trust in this respect cannot defeat the trust.

APPEAL from a judgment of the District Court, Jaffna.

C. Thiagalingam, Q.C., with *C. Ranganathan* and *E. R. S. R. Coomaraswamy*, for the added defendants-appellants in 444 B and for the added defendants-respondents in 444A.

H. W. Jayewardene, Q.C., with *G. Barr Kumarakulasinghe* and *N. R. M. Daluwatte*, for the 1st defendant-appellant in 444A and for the 1st defendant-respondent in 444B.

A. Sambandan, with *S. Sharvananda* and *S. Sivarasa*, for the plaintiff-respondent in both appeals.

Cur. adv. vult.

May 12, 1959. BASNAYAKE, C.J.—

I have had the advantage of reading the judgment prepared by my brother Pulle, and I agree that the decree appealed from should be set aside and that the plaintiff's action should be dismissed with costs.

As my brother has stated the facts at length it is not necessary for me to recapitulate them all. The question that arises for decision is whether by deed No. 4867 of 27th July 1888 (P1) Kanapathy Aiyer Sanmuga

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Aiyer created a charitable trust. Kanapathy Aiyer Sanmuga Iyer by that deed dedicated to religious charity the lands referred to therein. This is how he expressed his wish.

"I, Kanapathy Aiyer Sanmuga Aiyer, residing at Vannarponnai West, Jaffna, being desirous of my soul's attainment of salvation do hereby execute deed for the performance of charity. As it is my desire that feeding of Brahmins should be conducted on each 'Dwadesi' day occurring every month, I assign the following place for that purpose."

After describing the land he goes on to say :—

"I have, in order to be of use for the performance of the duty mentioned above, and for religious worship given all that is contained within these boundaries, including building, well, cultivated and spontaneous plantations the sacred name 'Dwadesi' Madam and have executed this instrument for the performance of charity. The value of this is Rs. 500.

"The properties I give over to this Madam are :—

. . . . . ."

He then describes the properties, and states :—

"I have given over to the abovenamed 'Dwadesi' Madam all these lands so that with the income therefrom the feeding of Brahmins may be conducted on each 'Dwadesi' day occurring every month at the said 'Dwadesi' Madam and also to perform Abishekam and Neivethiam ceremonies on each Vinayaga Sathurthi day and on each Sathaya Lunar Constellation day every month to Sri Visuvalinga Maha Ganapathi Deity who, as a blessing, has taken abode in the Temple situated in the land called 'Panrikoddu Walavu' at Vannarponnai East.

"The above 'Dwadesi' Madam, the properties given over to it, and the several acts to be performed as aforementioned shall be managed by me and Veeravagu Aiyer Purushothama Aiyer of Vannarponnai as Trustees and after my death and that of Veeravagu Aiyer Purushothama Aiver hereditarily as Trustees, and in the event of there being no male descendants, the said Purushothama Aiyer's female descendants only shall manage as Trustees.

"As I have mortgaged one of the aforesaid lands called 'Panrikoddu Walavu' in extent $2\frac{1}{8}$ lms. v. c. with all the appurtenances thereon to Madhava Aiyer Muttaiyar of Vannarponnai for Rs. 120 and interest on the 30th of June of the current year before the Notary attesting these Presents, I shall myself redeem the same.

"In accordance with these terms the said Trustee Veeravagu Aiyer Purushothama Aiyer too as a consenting party set his signature in the presence of Nagendra Aiyer Subramania Aiyer of Vannarponnai and Muttaiyar Sanmuga Aiyer of the same place at the office of the Notary on the 27th day of July 1888."

No particular formula is required by law for the creation of a trust. The requirement of law is that the author should make his meaning clear and evince his intention to create a trust and the Court will give effect to that intention. In the instant case Kanapathy Aiyer Sanmuga Aiyer the author of the trust declared by P1 has clearly indicated that the purpose of granting the lands in question to himself and another was for the advancement of his religion and maintenance of religious rites and practices of the Hindu faith. The beneficial interest is not vested in any ascertained individual or individuals but in an uncertain and fluctuating body, the Brahmins. Under the law in force in 1888 (Ordinance No. 7 of 1871) he was entitled to create a trust in the way he did.

The Trust declared by P1 falls within the ambit of " Charitable Trust " as understood in our law (Section 99, Trusts Ordinance) and it is not necessary to have recourse to the law of England where Charity has a special legal meaning. In the preamble to the statute 43 Eliz. c. 4 (since repealed) was a list of charitable uses which was taken by the Court of Chancery as a guide to determine what were and what were not charitable purposes. That statute was repealed by the Mortmain and Charitable Uses Act, 1888, which in section 13 (2) repeats the list in the preamble to the statute of Elizabeth. It is as follows :—

> " Whereas landes tenementes rentes annuities pfittes hereditamentes, goodes chattels money and stockes of money, have bene heretofore given limitted appointed and assigned, as well by the Queenes moste excellent Majestie and her moste noble progenitors, as by sondrie other well disposed psons, some for reliefe of aged impotent and poore people, some for maintenance of sicke and maymed souldiers and marriners, schooles of learninge, free schooles and schollers in univsities, some for repaire of bridges portes havens causewaies churches seabankes and highewaies, some for educacon and pfermente of orphans, some for or towardes reliefe stocke or maintenance for howses of correccon, some for mariages of poore maides, some for supportacon ayde and helpe of younge tradesmen, handiecraftesmen, and psons decayed, and others for reliefe or redemption of prisoners or captives, and for aide or ease of any poore inhabitantes concninge paymente of fifteenes, settinge out of souldiers and other taxes ; whiche landes tenements rents annuities pfitts hereditaments goodes chattells money and stockes of money nevtheles have not byn imployed accordinge to the charitable intente of the givers and founders thereof, by reason of fraudes breaches of truste and negligence in those that shoulde pay delyver and imploy the same :"

A gift to any of these purposes is charitable in England, but the list is not exhaustive and various other objects have from time to time been declared to come within the ambit of the Act. The popular meaning of the word " charitable " is widely different from the legal meaning in England and in our law too its legal meaning is limited by section 99 of the Trusts Ordinance. My brother has in his judgment referred to Lord Macnaghten's classification of " Charity " in its legal sense under four principal heads (*The Commissioners for Special Purposes of the Income*

Tax v. Pemsel[1]). In that case Lord Macnaghten after stating that the popular meaning of the words " charity " and " charitable " does not coincide with their legal meaning observes :—

> " How far then, it may be asked, does the popular meaning of the word " charity " correspond with its legal meaning ? " Charity " in its legal sense comprises four principal divisions : trusts for the relief of poverty ; trusts for the advancement of education ; trusts for the advancement of religion ; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads. The trusts last referred to are not the less charitable in the eye of the law, because incidentally they benefit the rich as well as the poor, as indeed, every charity that deserves the name must do either directly or indirectly. It seems to me that a person of education, at any rate, if he were speaking as the Act is speaking with reference to endowed charities, would include in the category educational and religious charities, as well as charities for the relief of the poor. Roughly speaking, I think he would exclude the fourth division. Even there it is difficult to draw the line."

Although the categories of " charitable trusts " in section 99 of our Ordinance and the above classification are in many respects similar it is unsafe, as pointed out by my brother, to be guided solely by the numerous English cases which determine what are charitable purposes, especially as those cases are not easy to reconcile.

The learned District Judge is wrong when he states that our law regarding charitable trusts is the same as the English law. Our law as to charitable trusts is enacted in the Trusts Ordinance and even where the texts are apparently the same, we should be careful in accepting as authority for a proposition of law under one system judgments rendered under a different system of jurisprudence. Even though the propositions of law stated by the Courts in England might in some respects appear to correspond with the language used in our statutes we should interpret and apply our statute according to the conceptions of our law.

There is in this case the added circumstance that since 1888 till the present action there has been no question that a charitable trust was declared by deed P1 and that the lands in dispute were trust property. P6, P8, P12, P13, P15A and P17 are evidence of the uniform course of conduct of the parties.

The plaintiff is not entitled to claim the land " Seemanthidal and Thiruvalarthidal " as his private property.

PULLE, J.—

There are two appeals in this case, numbered 444A and 444B. The first is by the defendant and the second by the three added defendants. The appellants seek to set aside a decree dated 31st May, 1956, in favour

[1] *(1891) A. C. 531 at 583.*

of the plaintiff by which he was declared " the owner, proprietor and possessed of the land and premises " comprising a divided extent of 23 lachams, p.c., out of a land called Seemathidal and Thiruvalarthidal situated within the Municipal limits of Jaffna. The plaintiff valued this land at Rs. 48,000.

It is common ground that the land belonged originally to one Kanapathy Aiyer Sanmuga Aiyer which he dealt with, along with other properties, by a notarially attested instrument P1 dated 27th July, 1888. The main controversy in the case centred on whether deed P1 created, within the meaning of section 99 (1) (*c*) of the Trusts Ordinance (Cap. 72), a charitable trust " for the advancement of religion or the maintenance of religious rites and practices ". By deed P11 of 10th October, 1947, the plaintiff leased the land in suit to the defendant, namely, the appellant in 444A, for a term of five years. In P11 the plaintiff states that he held and possessed the land as the "hereditary trustee" under and by virtue of P1 of 1888 which he calls the " deed of Trust Appointment". The added defendants are three office-bearers of what is called the Board of Trustees of Panrikoddu Sri Visuvalinga Maha Ganapathy Kovil, Vannarponnai, Jaffna, who purported by deed No. 3237 of 25th July, 1955, (marked 2D4), to lease to the defendant an extent of 7½ lachams, p.c., out of the land in suit for a term of five years with an option to renew. The claim of the added defendants to lease the premises was based on a deed No. 6385 of 25th June, 1951, (2D5) by which two persons claiming to be *de jure* trustees of the premises in question, and other lands, settled a scheme for the management of the trust. It is clear from the admissions and findings in the case that if the land was comprised in a charitable trust, the right of the plaintiff to administer it would be unquestionable. The plaintiff, *qua trustee*, was entitled to have the defendant ejected on the termination in 1952 of the lease P11 granted to him by the plaintiff. The events immediately leading to the institution of the present case and the allegations in the plaint show plainly that the plaintiff is not interested in the land in the capacity of a trustee. He carries on business in Bombay under the name of " Subran Monie " and is apparently not in a position to discharge the duties of a trustee in Jaffna. His claim in this case as set out in the plaint is that deed P1 of 1888 " did not create any trust and the plaintiff is the absolute owner of the said land free from any trust or obligation whatsoever. The said deed No. 4867 of 27. 7. 1888 is invalid, inoperative and of no force or avail in law". It is on this basis that he has sought for and obtained a declaration in his favour under the decree appealed from.

The only question that falls to be determined on this appeal is whether Sanmuga Aiyer by deed P 1 created a charitable trust. The material portions of the deed, as translated, are as follows :

" I, Kanapathy Aiyer Sanmuga Aiyer, residing at Vannarponnai West, Jaffna, being desirous of my soul's attainment of salvation do hereby execute deed for the performance of charity. As it is my desire that feeding of Brahmins should be conducted on each ' Duwadesi '

day occurring every month, I assign the following place for that purpose." Here follows the description of a land called "Panrikoddu Walavu" in extent 2 $\frac{11}{16}$ lachams, v.c., with reference to its boundaries.

The second paragraph of P 1 reads :

"I have in order to be of use for the performance of the duty mentioned above and for religious worship given all that is contained within these boundaries including building, well, cultivated and spontaneous plantations the sacred name 'Duwadesi madam' and have executed this instrument for the performance of charity."

In the next paragraph the owner purports to "give over to this madam" three properties of which the first named is the land which is the subject matter of the action. The purpose for which the properties were given is expressed thus :

"I have given over to the above mentioned 'Duwadesi' madam all these lands so that with the income therefrom the feeding of Brahmins may be conducted on each 'Duwadesi' day occurring every month at the said 'Duwadesi' madam and also to perform Abishekam and Neivethiam ceremonies on each Vinayaga Sathurthi constellation day every month to Sri Visuvalinga Maha Ganepathi Deity who, as a blessing, has taken abode in the temple situated in the land called 'Panrikoddu Walavu' at Vannarponnai East."

In the concluding paragraph Sanmuga Aiyer appointed himself and one Purushotam Aiyer as joint trustees and provided for the devolution of the trusteeship after their deaths.

Before one could express with confidence whether or not the deed created a charitable trust, there are terms which have first to be understood. The significance of the Abishekam and Neivethiam ceremonies has to be explained. It is unfortunate that neither side thought it necessary to call a disinterested witness versed in the tenets and religious practices of Hindus in Jaffna to throw light on the religious significance of feeding Brahmins on "Duwadesi" day at a place called a "Madam" constituted for that purpose and of performing Abishekam and Neivethiam ceremonies at a temple dedicated to "Sri Visuvalinga Maha Ganapathi Deity who, as a blessing, has taken abode in the Temple situated in the land called 'Panrikoddu Walavu' at Vannarponnai East". All the lawyers appearing in the case, save the Proctor for the plaintiff, are Hindus and so is the learned District Judge. Considering the statements in the two petitions of appeal and passages in the judgment under appeal there is a sharp difference of opinion as to the true nature and character of Abishekam and Neivethiam ceremonies and the feeding of Brahmins at the madam. In one passage the trial Judge states,

"Mr. Kanaganayagam seeks to come under section 99 (1) (*c*). He submits that the provisions for the feeding of Brahmins (Brahamano bojana) once a month in this house . . . . . and the performance of abisheka (bathing of the deity) and neivethiams (offering of eatables

to the deity) constitute ' maintenance of religious rites and practices '. Even if they are ' religious rites and practices ', there is nothing to show that they are of benefit to the community. "

In another passage the learned Judge states,

" Sanmuga Aiyer did not purport to give the lands to the Sri Visuvalinga Maha Ganapathy temple. Had he done so it would be a valid charitable trust. But what he ordained was that, for the attainment of salvation of his soul, abishekams (bathing of the deity) and neivethiams (spreading of edibles before the deity) should be done from the income of the lands. That would not be religious rites. If he ordained that poojahs and/or festivals should be conducted at the temple one can consider them to be religious rites and practices. "

The question suggests itself at once. If abishekams and neivethiams are not religious rites and practices, then what are they ? If the celebration of poojahs is a religious rite, what is it that takes abishekams and neivethiams out of the category of religious rites ? With all respect to the learned Judge I fail to see the difference between the one and the other *qua* religious rites. It strikes even a person who is not deeply versed in the tenets of the Hindu religion that the bathing of an image in which a particular deity is believed to dwell and who is worshipped in a public temple is an act of reverence towards that deity which could properly be called a religious rite or practice coming within the purview of section 99 (1) (*c*) of the Trusts Ordinance. The ceremony of neivethiams consisting of the spreading of edibles before the image suggests the making of an offering to the deity in return for which the devotee hopes to receive spiritual or temporal favours.

As stated earlier it was the intention of Sanmuga Aiyer that Brahmins should be fed on each " Duwadesi " day of each month at the place called " Panrikoddu Walavu " and that the place to which he gave the " sacred " name of " Duwadesi Madam " should also be used for religious worship. On this part of the case the learned Judge states :

" If P1 had ordained that poor Brahmins in a particular area should be fed in the building on the land of 2 11/16ths lachams on Duwadesi day every month then it would pass the test of benefit to a section of the community " and would fall under section 99 (1) (*a*) of the Trusts Ordinance—for the relief of poverty. He continues,

" The motive for the gift was the attainment of the salvation of his soul. This is of a private nature and cannot be said to be for benefit to the community. Therefore, it cannot be a charitable trust.

" P1 does not create a madam. It merely purports to give the name Duwadesi madam to the land and the house on it. A madam is a place of religious resort at which pilgrims rest and perform certain ceremonies. There should be a shrine in it, if any worship is to take place there. The evidence shows that there is no shrine in the building known as Duwadesi Madam. There is no evidence that pilgrims go there to rest. "

If unconnected with the performance of a public religious rite a person ordains the feeding of Brahmins, irrespective of their poverty, as a means of attaining salvation, there is much to be said for the view that such a disposition would not be a charitable trust. In the present case, however, the provisions relating to the feeding of Brahmins and the " assignment " of a place for that purpose indicate that Sanmuga Aiyer had in view the performance of ceremonies of a public character. Why should Brahmins, who admittedly are the priests of the Hindu religion, be fed in a particular place and on a particular day of the month, unless it be for the advancement of that religion ? I presume that a Brahmin is fed not because he is poor but because he is a priest. Now it is common ground that a " madam " rightly called is a place of religious resort—*vide* section 99 (4). It is clear from P1 that Sanmuga Aiyer intended Panrikoddu Walavu to be not only a feeding place for Brahmins but also as a place of worship. It seems to me in the context that in designating the property as " Duwadesi madam " he did more than give a bare name, he did in fact constitute a madam. It is not likely that Sanmuga Aiyer intended that his successors in title should exercise full rights of ownership over the property, subject to the obligation to vacate it once a month for the feeding of the priests. In deciding whether by reason of P1 Panrikoddu Walavu was comprised in a charitable trust it is not a point against the appellants that there is no shrine on the property or that there is no evidence that it has been in fact a pilgrims' rest. If a place is constituted as a madam, it is for those who accept the trust to do what is necessary to make it a place of worship and to let it be known to pilgrims that they have a place of rest. The continuous breach of trust cannot defeat the trust.

In support of the case set up by the appellants that deed P1 created a charitable trust stress was laid on a number of transactions to which the plaintiff was a party in which he had admitted that he was the trustee of a charitable trust. In P7 of 1921 the plaintiff in granting a lease of Panrikoddu Walavu described himself as the *present* trustee of Duwadesi madam to the management and possession of which he was entitled " as per the charity donation deed dated the 27th July, 1888 ".

Mention has already been made of the lease to the defendant P11 of 1947 in which the land in the present action was described by the plaintiff as " held and possessed by me as the hereditary trustee " under P1. By lease P12, also of 1947, the plaintiff leased to one Murugar Rajakuddy a 4-lacham block out of Seemathidal and Thiruvalarthidal. It is described as land belonging to Duwadesi madam by virtue of P1 and that the plaintiff possessed it as the " hereditary trustee and manager " of the madam. The plaintiff describes himself in like manner in deed P13 of 1949 which was executed as the result of a case, D. C. Jaffna No. 4355, filed by the plaintiff in 1948 in his capacity as trustee of Duwadesi madam against one Nagalingam Amirthalingam. It was alleged in this case that in 1938 a previous trustee one Sornammah, a sister of the plaintiff's mother, had leased Seemathidal and Thiruvalarthidal to Amirthalingam

for 10 years by a deed of 1938 and that after the death of Sornammah in 1945 the lessee had failed to pay rent to the plaintiff. His prayer, *inter alia*, was

" (*a*) for a declaration that he is the the lawful trustee of the aforesaid trust land ;

(*b*) for a vesting order vesting the said land in the plaintiff. "

A settlement reached by the parties was recorded as follows :

" Parties file following terms of settlement. The plaintiff is declared the lawful trustee of the trust described in para. 1 of the plaint and vesting order is to be entered in his favour vesting the said trust and its temporalities. The defendant to continue in occupation of the land in the schedule to the plaint for a period of two years from 1.3.1949 to 1.3.1951 on a fresh lease bond to be entered between the parties. "

D. C. Jaffna No. 4425 was another case filed by the plaintiff. He claimed to eject the occupants of the madam in his capacity of trustee. The dispute was eventually settled. The plaintiff was declared the trustee of the madam and a vesting order made in his favour.

The last of the cases is D. C. Jaffna No. TR 78 in which the plaintiff sought on 21st December, 1949, the permission of court to sell the land which is the subject matter of the present action. In para. 3 of the affidavit (2D1) supporting the application the plaintiff stated:

" By his deed bearing No. 4867 dated July 27th, 1888, and attested by M. Kandasamy of Jaffna, Notary Public, the said Sanmuga Aiyer dedicated the house in which he lived at Vannarponnai to a madam referred to as ' Duwadesi Madam ' in the said deed for carrying out certain religious rites and dedicated three other pieces of lands, described in the schedule hereto, from the income of which the objects of the trust were to be carried out. "

There was opposition to this application especially by one Arumugam Chettiar who claimed to be the trustee and manager of Sri Visuvalinga Maha Ganapathy temple referred to in P1. While reading through the evidence taken in case No. TR 78 it is difficult to resist the impression that had the plaintiff pressed his case to a finality he would have failed in his application. He applied on 27th September, 1951, to withdraw the application because he had been advised by his lawyers in regard to P1 that " according to the true nature of the said deed no charitable trust had been created and the full dominium over the property had been vested in the applicant unencumbered by any trust or legal obligation ". The District Judge refused to allow the withdrawal but in appeal this court granted his request without prejudice to the parties to litigate the matter afresh.

It is, therefore, clear that from 1921 till 1951 the plaintiff had consistently taken up the position that deed P1 created a charitable trust and that by reason of its provisions the land which is the subject matter of this action was comprised in that trust. It cannot, however, be

disputed that if on a true interpretation of the deed the creation of a charitable trust cannot be read into it, the admissions of the plaintiff do not preclude him from now asserting against the defendants that he is the legal owner of the property without a trust of any kind being attached to it. An issue of estoppel was raised by the defendants but it was decided against them and the correctness of that decision was not challenged before us. Now what is the weight to be attached to the admissions made by the plaintiff before the institution of the present action that he held the property as the trustee of a charitable trust ? Obviously P1 is not a deed which, so to speak, interprets itself. It contains words like " Duwadesi ", " Madam ", " abishekam ", " neivethiam " which are not of common English usage, and, therefore, their true import has to be ascertained in the context of the religious beliefs of the person who executed the deed. These are matters of a factual character and in my opinion the admissions are tantamount to statements by the plaintiff that the " madam " referred to in P1 is a place of religious resort, that " abishekam " and " neivethiam " described as " ceremonies " in P1 are " religious rites and practices ", and that the " madam " and these ceremonies were provided by Sanmuga Aiyer for the benefit of a section of the public. To my mind it is inconceivable to assign any content to his admission that he was the hereditary trustee of a charitable trust under P1 without reading into it an admission of those factual matters on which extrinsic evidence could have been led to shew that Sanmuga Aiyer had used language in P1 which had the result of creating a charitable trust within the meaning of Chapter X of the Trusts Ordinance. If the contention is that the admission of the plaintiff did not have the effect indicated by me, then it was for him to adduce evidence to satisfy the court that he had been led erroneously to making it and that upon a correct understanding of the language in P1 an intention to create a charitable trust could not be read into it.

The importance attached by the plaintiff to the judgments in *Re Coats Trusts, Coats v. Gilmour and Others* in the Court of Appeal, (1948) 1 All E. R. 521 and in the House of Lords, (1949) 1 All E. R. 848 perhaps reveals the reason why the plaintiff, after having for several years put himself forward as the trustee of a charitable trust, alleged its non-existence and claimed to have inherited the lands comprised in it as the sole surviving heir of Sanmuga Aiyer. The learned trial Judge has referred to this case to support the proposition that a gift to be a valid charitable trust must be not only for the advancement of religion but also for the public and not merely private benefit, like the attainment of salvation of one's soul. Before dealing with the applicability of *Coats'* case I desire to comment on the statement of the Judge,

> " I agree with learned counsel on both sides that our law regarding charitable trusts is the same as the English law. "

It seems to me that this is too wide a proposition. If a trust is claimed to be charitable and it falls within one or other of the categories specified in section 99 (1) of the Trusts Ordinance no principle of English law relating to charities is admissible to shew that it is not. The application

of English law is limited by the provisions of section 2. The four divisions of " charity " in its legal sense as laid down by Lord Macnaghten in the well-known case of *Commissioners for Special Purposes of Income Tax v. Pemsel* [1] include " trusts for the advancement of religion ". While trusts " for the advancement of religion " are provided in section 99 (1) (*c*) express provision is also made for trusts for " the maintenance of religious rites and practices " which are not mentioned in the divisions set out in *Pemsel's* case. In deciding whether an instrument has created a charitable trust it seems to me to be unsafe to be drawn into the complexities of English legislation beginning with the preamble to the Act of Elizabeth I passed in the year 1601.

In the present case there was no need to have recourse to the English law to hold that a trust alleged to be charitable must be one for the public benefit because section 99 says so expressly. Whether a trust will be for the " benefit of the public or any section of the public " will be largely a matter of evidence. It is hardly helpful to judge that issue in the present case by a decision of the House of Lords, on the evidence placed before it, that a gift to a community of Carmelite nuns who led a purely contemplative life within the four walls of a convent and shut out from the outside world did not come within the spirit and intendment of the preamble to an Act passed in 1601 to make it a charity.

In my opinion the deed P1 created a valid charitable trust. At the argument in appeal the fate of the plaintiff's action rested solely on whether he is the unfettered owner of the property in question. I hold that he is not with the consequence that the decree appealed from should be set aside and the plaintiff's action dismissed with costs here and below.

Decree set aside.