The British Charity Commission and the Cy-près Doctrine, 1853-94

A Study in the Decline of Reforming Zeal

by S. R. MEALING *

I

The Charity Commission, set up by an Act of the British Parliament in 1853 after seventeen years of special commissions and select committees on charities, [1] was a typical product of the age of reform. Its powers were limited and its objects were defined only by implication. Since it shared the lesser powers of the Court of Chancery over charitable trusts, respect for the division of powers demanded that its connection with Parliament should be slight: ten years earlier a bill to found a similar commission had been withdrawn after accusations that it would give judicial powers to an executive body, [2] and an amendment to the 1853 bill, leaving the commissioners eligible (like Poor Law Commissioners) to sit in Parliament, was heavily defeated. [3] Yet the new Commission required some access to the legislature: it could frame schemes to change the disposition of charitable funds, but they had no force unless embodied in a parliamentary Act. At the same time it was supposed to be independent of politics, so that it was not put under a minister. It was new, but its powers were all old and all could still be exercised by their original owners — Chancery, Parliament or the attorney-general. It was expected to reform charitable trusts without changing the law concerning them and to make trustees efficient without compelling them to audit their accounts or to re-vest the property they administered. The demand for reform had been met by pouring the old wines into a new bottle. The resulting ferment was laudable, but not very comfortable for the bottle. One of its results was that the Charity Commission was soon dissatisfied with its powers and with those of Chancery, to which trusts reluctant to be reformed could appeal. In that Court's jurisdiction over charitable trusts there was only one point where reform could hope to effect an opening. This was the *cy-près* doctrine, by which the object of a trust could in certain circumstances be changed, provided that the new object was as near as possible to the old. Otherwise, Chancery operated to preserve the original objects of charitable trusts, no matter how irrelevant they might have become to the major national concern of urban poverty; and it also

* Department of History, Carleton University.

1 See D. E. OWEN, *English Philanthropy, 1660-1960* (Cambridge, Mass., 1964), 183-208.

2 Sir George Grey's bill of April 1843. *Hansard*, 3rd series, lxix, 843-47.

3 By 113 votes to 32 in the House of Commons. *Ibid.*, cxxix, 1487-90.

operated to preserve the trusts themselves, even when their funds were too small, when separately administered for diverse objects, to be regarded as reasonably efficient. [4] The Commission therefore sought both to acquire Chancery's *cy-près* jurisdiction and to see it extended. That effort is the subject of this paper.

The real weight of the Commission's function in 1853 was administrative. To exercise its general powers of inquiry it had two inspectors, increased to five in 1856. To encourage the good management of charitable property its secretary was official trustee of charity lands, and he with the two original inspectors formed the official trustees of charitable funds. [5] Apart from these facilities the Commission was far better suited than Chancery to supervise the administration of charitable trusts. It was unhindered by other very different and heavy business, not precluded from taking the initiative in discovering abuses and not yet badly in need of reform itself. Above all, its services were cheap. The average cost of an application to Chancery was about £50; and a suit might take ten years, its cost absorbing the whole capital of the great majority of trusts then reported. [6] There were more subtle traps in Chancery, too. The Preston Hospital, in the course of an application in 1720, had its income held by officers appointed by the court. It was still so held in 1876, at an annual cost to the charity of about £100. [7] In contrast, the Commission charged no fees. Its parliamentary schemes, to be presented as government bills, were also free to trusts, whereas private Acts cost a minimum of £600. [8] The facilities and knowledge made available to trustees were unprecedented; so was the legal immunity in effect conferred upon trustees who followed the Commission's advice. These benefits were announced in the *Gazette* as well as in 15,000 circulars, with the result that the Commission in its first full year of operation received over 1,100 applications.

It was however far from contented with its comparatively humble mission. In 1855 it suggested that "the direct remedial powers of our Board . . . be judiciously, but considerably extended". [9] The next year it offered an argument: its orders and schemes were very rarely modified by judges, whether on the bench or in chambers. The power to authorize its own schemes, thus justified, would save work in the office. [10] And in February, 1860, immediately before being given a share of Chancery's power to

[4] Of 28,840 charitable trusts reported in 1850, 22,760 had incomes of less than £30 a year. *Hansard,* 3rd series, cxxvi, 1012.

[5] Return of Personnel, Salaries and Travelling Expenses made to the Civil Service Commissioners, *Parliamentary Papers,* 1864 (83), xxxii.

[6] So two chancellors: Campbell in 1860, *Hansard,* 3rd series, clix, 1188; Cranworth in 1853, *ibid.,* cxxvi, 1012.

[7] Twenty-third Report of the Charity Commissioners, *Parliamentary Papers,* 1876 (c. 1455), xx.

[8] *Hansard,* 3rd series, cxxvi, 1015.

[9] Second Report of the Charity Commissioners, p. 3, *Parliamentary Papers,* 1854-55 (107), xv.

[10] Third Report of the Charity Commissioners, p. 6, *ibid.,* 1856 (2060), xxii.

change the objects of charitable trusts, the Commission asked for a great deal more: [11]

> We believe also that a very important extension might be given to the general benefit resulting from charitable endowments by a judicious modification of the present law, which generally prohibits any diversion of the funds from the specific objects prescribed by the Founder, so long as a strict compliance with his directions continues to be practicable; however remote the foundation may be, and however extensively the social condition of the locality intended to be benefited by it, or the proportion of the gift in point of value to the intended purposes, may have been changed.

The Commission, in fact, launched its attack on the *cy-près* doctrine before getting any power to apply it.

Although the Commission already wanted more than the full *cy-près* power, it was about to get less. The Charitable Trusts Act, 1860, attached conditions to the Commission's exercise of Chancery's jurisdiction over trusts. Of these, two were important. It could act only on the application of a majority of the trustees if the charity had £50 a year or more. For smaller charities the application of one trustee or any two inhabitants of the beneficial area would suffice; here the Commission was on equal terms with the courts. [12] Further, the Commission had to refer difficult or controversial cases to the courts. It could, in short, apply the *cy-près* doctrine in simple cases if a body of trustees asked it to or if the trust were small enough. The Act had been intended to do more. As Lord Campbell first presented it, section five had given the Commission a choice of exercising its jurisdiction in contentious cases, but the choice was taken away in committee. Section four, requiring an application from trustees, had originally only given them a chance to object in writing. Even the less stringent rule for application to act on smaller endowed charities had been absent from section two as first drafted. Moreover there were other changes in committee and on re-committal, clearly showing Parliament's jealousy of the Commission: trustees could not be required to pay the cost of having themselves investigated, the official trustees had to lay their accounts before Parliament annually and the Commission when exercising its new jurisdiction had to keep full minutes to facilitate appeal. It was not much consolation that the secretary's salary was raised in committee to £800. [13]

The truth was that even the Act of 1860, added to those of 1853 and 1855, did not give the Commission the powers originally intended for it by Lord Cranworth. As actually created in 1853, it was a useful administrative body with incidental judicial powers. The Act of 1860 did not so far extend its judicial powers as to give it the general mission to reform charities that Cranworth intended. His original bill had proposed that the

[11] Seventh Report of the Charity Commissioners, p. 6, *Parliamentary Papers*, 1860 (2652), xxxiv.

[12] Charitable Trusts Act, 1853, sec. 43; Charitable Trusts Act, 1860, sec. 4.

[13] The original bill and its two amended versions are in *Parliamentary Papers*, 1860 (242, 300, 331), iii.

Commission should have power to transfer any charitable funds to any charitable objects in four cases: where the original object of the trust had failed, where it had departed from the founder's intention or created pauperism or immorality, where the union of small foundations would be useful and where a trust over sixty years old had no or insignificant beneficial results. The Commission was to frame schemes which were to be laid before Parliament, becoming law if not objected to within three months. If they were objected to, they might still pass as bills. [14] The Charity Commission envisaged in this measure would have had powers wider than the Court of Chancery — it would, in fact, have had delegated legislative authority — and the limitations of *cy-près* would have been swept aside. Cranworth's plan amounted not simply to the creation of an independent board but to the reform of charity law and the supersession of Chancery's jurisdiction over charitable trusts. The City livery companies, the Society for the Propagation of the Gospel, the bishop of London and a variety of lawyers attached to their practice descended upon it. [15] The Act of 1853 as finally passed was practically a defeat. The Act of 1860 recovered only a very little ground, and left the Commission on a quite different basis from that originally proposed. It could accomplish major reforms of charitable trusts only by inducing Parliament to act or by acting itself within the limits of the *cy-près* doctrine.

The first of these alternatives was on the face of it much the more promising. The real source of the trouble lay not in the narrowness of the *cy-près* power but in unrestricted testamentary disposition, combined with charities' exemption from the rule against perpetuities. The obvious instrument of reform was legislative authority, applied either to refashion the general law of charities or to remedy abuses piecemeal. The Commission's authority to frame parliamentary schemes was intended by Cranworth to be the instrument of piecemeal reform; but the requirement that each scheme pass through Parliament as a bill frustrated the plan. The trouble was explained most directly by Robert Lowe: "... if anybody gets up and objects to the details, it becomes a mere question of statement and counter-statement between him and the person who has charge of the bill. Parliament naturally does not like to decide, and the thing falls through." [16] The Commission's first parliamentary scheme, for Sherburn Hospital, showed that even where abuse was clear remedies could meet opposition. [17] Some local interest or other was apt to oppose almost any change, and of course members of Parliament were not anxious to offend their constituents. Of the four Commissioners one was always a member, but he did not attend the board

[14] *Hansard*, 3rd series, cxxvi, 1016-17. *Cf.* Arthur, Lord HOBHOUSE, *The Dead Hand* (London, 1880), 57.

[15] C. S. KENNY, *The True Principles of Legislation with Regard to Property given for Charitable or other Public Uses* (London, 1880), 152.

[16] Evidence before the Schools Inquiry Commission, Question 6547, *Parliamentary Papers*, 1867-68 (13), xxviii.

[17] See the Commission's correspondence with the bishop and the archdeacon of Durham, *ibid.*, 1856 (134, 134-I), liv.

at all regularly until after 1887. In 1894 he did not even have a room in Gwydyr House. [18] In the absence of any member specifically charged with pleading the Commission's case, contested bills generally died for lack of defence. In sixteen years only eighteen succeeded [19] in spite of the fact that after the Magdalen Hospital scheme in 1857 the Commission deliberately avoided disputed cases. The House of Commons referred that scheme to Chancery, although Chancery had, on the attorney-general's recommendation, referred the similar case of another Newcastle hospital to Parliament. [20] To reform 40,000 trusts one by one was not an attractive or a popular task for the national legislature. It presented the matter in the most esoteric, picayune, tiresome way possible. It made charitable trusts a perpetual nuisance, as Russell wrote in 1868, [21] always presented them so that public interest had no defence against private grievance and dragged the vital debate on principles on to exhaustion. Still, it was not very reasonable of Parliament, having refused to delegate its authority, also to refuse to exercise it.

The Commission had expected great things of its parliamentary schemes. Their failure became the bitterest of its grievances. There seemed no way of pleasing Parliament. A scheme for the Etwall Hospital passed, but only after a clause extending the beneficial area had been dropped. The result was to leave £3,000 a year to 58 labourers. A scheme for Tancred's Charity was first changed in committee to follow the original bequest more closely, and then thrown out because of its narrow limitations. [22] "We indeed have authority to propose, but have no effectual power to promote [parliamentary schemes]", was an entirely justified complaint. [23] Even if a scheme lived to become an Act, there was no machinery for putting it into effect. [24] Reporting in 1868 that it had no schemes for Parliament, the Commission administered a rebuke to an erring legislature: [25]

> [Parliamentary schemes have] not been unproductive to us at former periods of great discouragements. Schemes elaborated by us, after careful inquiry and consideration... have failed to be submitted to Parliament, in the face of vehement opposition of interested parties. We have possessed no means of ensuring to other proposals the effective support which they have appeared to ourselves to deserve, and without which they have failed, while other measures which we have felt it our duty to recommend have been discountenanced on their proposal to Parliament, under circumstances peculiarly embarrassing to us.

18 T. E. Ellis before the Select Committee on the Charity Commission, Questions 2743-49, *ibid.*, 1894 (221), xi.

19 So W. E. Forster in 1869, *Hansard*, 3rd series, cxciv, 1368-69.

20 Sixth Report of the Charity Commissioners, pp. 4-5, *Parliamentary Papers*, 1859, Session 1 (2948), xii.

21 Russell to Hobhouse, 12 April 1868, L. T. HOBHOUSE and J. L. HAMMOND, *Lord Hobhouse: A Memoir* (London, 1905), 34.

22 Hobhouse, *op. cit.*, 63-5, 65-8.

23 Nineteenth Report of the Charity Commissioners, p. 6, *Parliamentary Papers*, 1872 (c. 527), xviii.

24 Sixteenth Report of the Charity Commissioners, p. 4, *ibid.*, 1868-69 (4117), xvii.

25 Fifteenth Report of the Charity Commissioners, p. 6, *Parliamentary Papers*, 1867-68 (4017), xxi.

Having expressed its own disappointment, it proceeded in its next report to underline the public consequences: "The apparently powerful machinery devised by the legislature for effecting in this manner the reformation of Charities of special magnitude and importance is virtually powerless for its object." [26] Parliamentary schemes, in fact, did not work; and the Commission's ability to reform trusts therefore rested on its share of the *cy-près* power.

II

Its report in 1868 drew this conclusion specifically, [27] and from then until 1873 every report except one attacked the limitations of *cy-près*. All told, its complaints of the doctrine — not merely of its own limited powers to apply it — appeared in the tenth report, in the fourteenth through the eighteenth, in the twentieth and in the twenty-eighth. The tenth report (1863) admitted that the Commission's duty was confined "to the administration of the existing law", [28] which it pointedly forbore to criticize at length. The sixteenth report (1869) offered a principle of reform, later repeated: all tribunals should be able to modify trusts "which by reason of the lapse of time or change of circumstances shall appear to be no longer beneficial to the object of the Charity . . .". [29] The twentieth report (1873) chose to emphasize that the real object of reform was to enable the wishes of founders to be properly carried out. What needed change were those provisions "no longer calculated to promote the substantial object of the foundation", the continued protection of which would be "found upon a clear examination to be in reality subversive of the design of the trust". [30] This solicitude for founders was not however indiscriminate; doles ought to be converted into useful charities. It is hard not to suspect that the Commission was trying to disarm criticism by this change in emphasis; in any case the dislike of *cy-près* first expressed in 1860 was in no way modified.

The next year the Endowed Schools Act transferred to the Commission powers wider than *cy-près* for educational objects. Perhaps as a result there was a lull in its complaints. Then two shocks in 1880-81 drew from the Commission statements in its own defence. The first decision in the Campden Charities case by the Chancery Division (which by section 34 (3) of the Judicature Act, 1873, had inherited jurisdiction over trusts) appeared to restrict the existing scope of the *cy-près* doctrine. The Charitable Trusts Bill, 1881, meant to increase several of the Commission's powers, foundered in the face of opposition. The first of these provoked the Commission into a statement of the importance of public interest in charities as the basis for their special privileges and for state control over them. The state ought

[26] Sixteenth Report of the Charity Commissioners, p. 4, *ibid.*, 1868-69 (4117), xvii.

[27] Fifteenth Report of the Charity Commissioners, p. 7.

[28] Tenth Report of the Charity Commissioners, p. 4, *Parliamentary Papers*, 1863 (3130), xxviii.

[29] Sixteenth Report of the Charity Commissioners, p. 8, *ibid.*, 1868-69 (4117), xvii.

[30] Twentieth Report of the Charity Commissioners, p. 6, *ibid.*, 1873 (c. 724), xxi.

to control trusts "co-ordinately with the intentions of the founder".[31] The *cy-près* power of the courts did not provide that control, as all the legal witnesses before the Schools Inquiry Commission had agreed. In substance the Charity Commission made a restriction of the *cy-près* doctrine the occasion for the most thorough-going of all its attacks upon the unreformed law of charities. Nor did the second shock cause it to recant. The debate on the Charitable Trusts Bill, 1881, led to a statement that appeared, after the failure of the bill, as an appendix to the report of 1882.[32] Thoroughly on the defensive, the Commission was nevertheless convinced of the justice of its own case. Its main concern was to show that it had usurped no powers, but only exercised those already belonging to Chancery before 1853, and that its jurisdiction was not directed against trustees. The argument for increased powers followed Cranworth's in 1853; it was based on the recommendations of the Brougham Commission, on a select committee's report in 1835 and on the bills that had preceded the first Charitable Trusts Act. The appeal was not to the authority of Parliament but to a plan of reform that Parliament had rejected.

It must be said that in appealing to the proposals of 1835 to 1853 the Commission probably distorted them. The original recommendation for a body like the Commission, in July, 1835, seems to fit the Act of 1853 just as well as Cranworth's bill.[33] On the other hand, Cranworth claimed to derive his bill almost entirely from Lord Truro's of 1851.[34] But Lord Cottenham, who introduced bills in 1847, 1848, 1849 and 1850, had preferred merely to facilitate Chancery's action;[35] successive Whig Chancellors therefore disagreed. Still, in the debates of May 1853 Lord Brougham supported Cranworth. His claim to represent the accepted opinions of charity reformers was contested only by Lord St. Leonards, lately Conservative Chancellor, whose speech soon trailed off into a dispute with Brougham as to which of them had more faithfully attended the latter's Commission.[36] But Cranworth himself was opposed to a fresh investigation of charitable trusts in 1864.[37] The correctness of the Charity Commission's contention in 1882 may be left open, for it leaves the present point unchanged; in attacking the *cy-près* doctrine the Commission was acting as an agent of the charity reform movement, not simply as a statutory body.

During the years from 1860 to 1882, the period of the Commission's active discontent, charity reform had three clearly distinguishable forms.

[31] Twenty-eighth Report of the Charity Commissioners, pp. 10-11, *Parliamentary Papers*, 1881 (c. 2862), xxviii.

[32] Twenty-ninth Report of the Charity Commissioners, Appendix A, *ibid.*, 1882 (c. 3198), xx.

[33] Report of the Select Committee on the Reports of the Commissioners of Charities, pp. vii-ix, *Parliamentary Papers*, 1835 (449), vii.

[34] *Hansard*, 3rd series, cxxvi, 1011-13.

[35] *Ibid.*, 3rd series, lxxxvi, 770.

[36] *Ibid.*, 3rd series, cxxvi, 1020-21. They had agreed to attend on alternate days, and each could therefore say that he had never seen the other on the Commission.

[37] HOBHOUSE and HAMMOND, *op. cit.*, 34.

One was the movement for making charity organized and scientific. Bernard's call to "investigate practically and upon a system" was one of its texts, but before Booth began to work in the 'eighties most of them came from *laissez-faire* economics. Beginning with a Benthamite insistence that charity must be judged by its results, the movement became more particularly distinguished by hostility first to doles and then to collective action. It was certainly the most important current in charity reform. The second was part of the movement for educational reform, which could neither avoid dealing with endowments nor resist the hope of diverting them as a painless way of paying for schools. The third, more directly Benthamite in origin than the first, was part of the movement for law reform which in these years transformed the procedure and structure of the courts of law. Its special preoccupation was the law of charitable trusts. The exemption from the rule against perpetuities which these trusts enjoyed, together with the lack of principles for defining them, had led to anomalies indefensible except at law; and all the currents of charity reform were decidedly hostile to them. It was however the law reformers who most explicitly stated, like the Charity Commission in 1881 and 1882, that public interest was the justification for the privileges of charitable trusts, and should be made the clear test by which they were defined and regulated. This, argued with varying degrees of moderation, was the burden of Fitch, of Mill in attacking him, of Hobhouse in attacking Mill and of Kenny without the stimulus of controversy.

The Acts of 1853 and 1860 directed the Commission into the first of these currents of charity reform, where it might have been content to encourage the sound management of charity property. Schemes to vest property or to reform bodies of trustees needed no change of the law. But the question of legal reform was bound to arise. Scientific charity condemned doles, yet in 1877 dole trusts with £383,029 a year were the third largest category reported by the Commission. Apprenticeships, not much approved of, were more than twice as well endowed as Nonconformist chapels. [38] Even the consolidation of small charities required a parliamentary or a *cy-près* scheme, and the Commission found both devices inadequate. Swimming with the current of educational reform, [39] it liked to convert dole charities into educational charities; and here, too, the law until 1874 thrust obstructions into the stream. With its personnel largely trained in equity law and with the law reformers in full swing, the Commission also naturally tended to recall the wider objects of Cranworth's original bill. It was a fair statement of the law to write, as Hobhouse did, that "the people regarded in dealing with foundations are not the living public but the dead founders". [40] Public benefit was not absolutely left out of consideration — "an almshouse for the kind treatment of scorpions" would not have been valid — but it carried

[38] Twenty-fourth Report of the Charity Commissioners, p. 4, *Parliamentary Papers*, 1877 (c. 1705), xxvi, which corrects the table given in the twenty-second report.

[39] This was denied in 1884, but I think it was true earlier. Report of Select Committee on Charitable Trust Acts, p. vii, *ibid.*, 1884 (306), ix.

[40] HOBHOUSE, *op. cit.*, 51, 58.

little weight against the directions of founders. It was even explicitly ruled out from the bench: [41] "It is not... the court's duty to direct charity property to be employed in such manner as it thinks will be the most beneficial for public purposes, but to carry into effect the intentions expressed by the founder, so far as these are not contrary to any existing law." With the impetus of reform behind it, the Charity Commission could hardly be content to reform the administration of funds directed to unreformed objects.

III

The Commission's position was awkward. It wanted to reform abuses in charitable trusts, but could not go very far in doing so unless the supremacy of founders' wishes could be undermined. The charity law reformers could attack the sacred founder directly, claiming that bad law was sustained by ignorant reverence of an unworthy object. [42] They could propose the unrestricted alteration of trusts after 21 years, [43] or 21 years after life. [44] They could point out that trustees were in fact allowed to distort the intentions of founders with impunity, so as for example to make a bricklayer's foundation for his own class into an aristocratic school. [45] Heroic courses were however ruled out for an independent board which had to fit its action to its powers. Since parliamentary schemes did not work, it could only attack the entrenched founder indirectly. But the *cy-près* power, which in most cases was all — and more than all — that it had, had not been developed as an instrument of reform. It arose from one of the special privileges of charitable bequests by which they differed from others in not being void for uncertainty. This rule, already old, was confirmed beyond dispute by Lord Eldon in *Moggeridge* v. *Thackwell* (1802) and *Mills* v. *Farmer* (1815). Its corollary was another rule to help courts decide what a founder had meant or to save his charitable intention if his directions had been explicit but illegal. The *cy-près* doctrine did not arise to save the public from bequests, but to save bequests from ambiguity. [46] Attempts to widen it for the use of reformers were therefore really attempts to reverse its original purpose.

Of course, the paradox was by no means complete. Failure of mode and surplus of funds as well as the original "failure of gift" would justify the *cy-près* application of a trust. It was on these first two grounds that *cy-près* was usually invoked by the nineteenth century, and that it presented an opportunity for reform. In *Da Costa* v. *De Pas* Chancery had applied a

[41] *Attorney-general* v. *Boucherett* (1855), quoted in L. S. BRISTOWE, C. A. HUNT and H. BURDETT, *The Law of Charity and Mortmain, being the fourth edition of Tudor's Charitable Trusts* (London, 1906), p. 145. Henceforth cited as *Tudor on Charities.*

[42] Special evidence that this was Hobhouse's policy is hardly necessary, but see his letter to Carnarvon, 28 June 1871, HOBHOUSE and HAMMOND, *op. cit.*, 39.

[43] Robert Lowe to Hobhouse, 7 April 1868, *ibid.*, 34.

[44] Vice-Chancellor Wood (Lord Hatherley) to Hobhouse, 22 July 1868, HOBHOUSE and HAMMOND, *op. cit.*, 32.

[45] KENNY, *op. cit.*, 183-84.

[46] *Tudor on Charities*, 140, 97-8, 98-9.

bequest for instructing people in the Jewish religion to the Foundling Hospital. The case had been decided in 1753, but was (and is) about as far as any court had ever gone; the only discernible connection between the original and the *cy-près* object would seem to have been that both were charitable. [47] There were two important and really wide *cy-près* applications in the twenty years before the Charitable Trusts Act of 1860. Thomas Betton's bequest was barely recognizable after 1844. One-half of the income, left to redeem British slaves from the Turks, was applied, not to the other two specified objects of the charity, but to Church of England schools anywhere in the country. This was a direct and deliberate contradiction of a rule stemming from the Thetford School Case of 1609. The court was, in Lord Langdale's words, "rather astute in entertaining some application in conformity more or less with the intention of the testator". And Lord Cottenham explained that "a charity might be *cy-près* to the original object which seems to have no trace of resemblance to it, but which may be properly adopted if no other can be found having a nearer connection". [48] In 1859 Mrs. Ashton's will, although clear enough, was simply ignored except that her charity was left in Dunstable. [49] There was even a tendency to explain the *cy-près* application of a bequest whose defined object had failed without reference to the rights of the founder. Property once given to charity, ran the explanation, was always given to charity, and *cy-près* was meant to enforce the rule. This however was neither accurate history nor accepted law. [50] Chancery did not regularly show the astuteness Langdale claimed for it; rather it kept its eye firmly on the terms of bequests. "What the Court looks for in all Charities", said Romilly as Master of the Rolls, "is the original intention of the founder... If it cannot carry them into effect specifically, it carries them into effect as nearly as may be, and with as close a resemblance to them as it can." [51] Where a bequest had clearly meant to found almshouses, it could not be applied to give hospital treatment to the almoners. [52] The two really wide *cy-près* applications in 1844 and 1859 were most unusual cases. In both the surplus was spectacular: £3,500 a year to redeem no slaves in Betton's Charity, £6,000 a year to six almswomen in Ashton's. They did not in themselves bring about a real change in the doctrine of *cy-près*. It was still designed to preserve the will of the founder, not to apply to it the test of public benefit.

After 1860 however the courts began increasingly to change founders' intentions without admitting it. The lead here came from the judgment in

[47] AMBLER, 228.

[48] *Attorney-general* v. *The Ironmongers' Company* (1844), *Tudor on Charities*, 205-8.

[49] *In re Ashton's Charity* (1859), Beavan, 117.

[50] *Attorney-general* v. *Lawes* (1849), A. D. TYSSEN, *The Law of Charitable Trusts* (2nd ed., London, 1821), 184-92. This explanation was apparently in the original edition of *Tudor on Charities*, but I did not find it in the fourth edition. Besides the cases cited in Tyssen, the authority of Holmes is against it. *Stratton* v. *Physio-Medical College* (1889), 149 Mass. 505.

[51] *Attorney-general* v. *The Dedham School* (1857), TYSSEN, *op. cit.*, 181.

[52] *Philpott* v. *St. George's Hospital* (1854), 27 Beavan 107.

the Ashton case, which specifically said that Mrs. Ashton could never have intended to give so much money to so few almswomen. The will itself contained a hint for this view, because in it Mrs. Ashton had clearly been in doubt that there would be any surplus at all after paying six pounds a year to each of six almswomen. The surplus was therefore applied to a Church of England school, open to dissenters. *Clephane* v. *The Lord Provost of Edinburgh* (1864) [53] and *In re Latimer's Charity* (1869) [54] were cases where no similar hint was to be found, yet the bequests were applied *cy-près*. Change of time and circumstance might make it undesirable to adhere strictly to the original object; it was not necessary to wait until adherence had become impossible. Although Lord Westbury's explanation that "the means for the attainment of the end may be altered from time to time" became the most quoted part of his judgment, it did not really touch the heart of the matter. That was done by Sir George Jessel, Master of the Rolls, on 24 May 1881 in the Campden Charities Case. The *cy-près* jurisdiction, he said, "[arises] wherever it is no longer possible beneficially to apply the property left by the founder or donor in the exact way he has directed it to be applied, but it can only be applied beneficially to similar purposes by different means". [55] It was not enough to ensure its inviolability that the founder's object be defined and practicable, it had to be beneficial as well. The test of public benefit had crept in.

Jessel's judgment was doubly important. In the first place it stated the widening tendency with a clarity attained only once before, and that outside Chancery. The Irish Board of Requests in 1800 had been empowered by statute to make *cy-près* applications of charitable bequests when their objects were only "inexpedient". This power, wider than Chancery possessed, was removed altogether when Sir James Graham reconstituted the Board in 1844. The main objections had however arisen from the fact that its members were all protestants, so that the point of law was not discussed. When in 1864 the Board recovered its *cy-près* powers, they were defined to be the same as those exercised by Chancery. [56] Jessel's judgment was more successful. He was the ablest equity judge of his day, and certainly the least guilty of judicial timidity. "I may be wrong", he once said, "but I never have any doubts." [57] His authority owed something to the force of his character as well as of his arguments; and on his death in 1883 no comparable champion of reform appeared. Nevertheless his decision became a leading

[53] L. R., 1 H. L., Sc. App. 417.
[54] L. R., 1 Eq. 353.
[55] Jessel's Judgment is quoted in *Tudor on Charities*, 214-16. The whole case, with the concurring judgments of James, l. j., and Lush, l. j., is in L. R., 18 Ch. D., 322-24. James' judgment received little notice, but was in a way more remarkable than Jessel's. He said that no scheme could be more *cy-près* than another; it was either *cy-près* to the original object or not. Any scheme which qualified has as good claim at law to be adopted as the one most nearly resembling the original object in fact. This amounts to translating *cy-près* not as "as near as possible" but as "near enough".
[56] KENNY, *op. cit.*, 200.
[57] James, Lord BRYCE, *Studies in Contemporary Biography* (London, 1903).

case. Although courts did not continue the widening process [58] his statement was not directly questioned until *In re Weir Hospital* in 1910. Then Cozens-Hardy, Master of the Rolls, added the rider that the case for a *cy-près* application "cannot be manufactured, but must arise *ex necessitate rei*". [59] He admitted however that of various permissible *cy-près* objects the court was competent to choose the most beneficial.

Moreover Jessel quashed a rebellion against the widening tendency, Vice-Chancellor Hall's original decision in the Campden Charities Case. The endowment was a complex one: there were three bequests, the beneficial area had already been turned into six parishes instead of one, and the Charity Commission's scheme proposed not only to consolidate the bequests but to define eight *cy-près* objects. Half of these, with half the income (which had grown from £10 a year to £3,600), were educational. It was on this point that Hall stuck. Part of Lord Campden's bequest might in his opinion go to education, as contributing to its object, "the good and benefit of the poor of the town of Kensington". But Lady Campden's bequest had been one-half "for the benefit of the most poor" in the area and one-half to apprentice "one poor boy or more". Apprenticeship was only part of one of the educational objects in the new scheme, and Hall refused to sanction so wide a departure from the will. Apprenticeship might be old-fashioned, but he required to show that it was actually injurious or illegal. Since it was neither, it must continue to enjoy half the income of Lady Campden's property, because she had set that ratio in 1634. [60] Of course, Hall's precedents were good, especially *In re Lambeth Charities*. But Jessel's were equally so, and reflected a more recent tendency.

The success of Jessel's decision however depended less on the weight of his precedents than on the fact that a breath of charity reform had reached the judges. It was only a breath. Its influence did not extend to the substitution of public benefit for the founder's authority as the essence of the *cy-près* doctrine. Public benefit was simply imported as a compliment to the good sense of the founder. He was to be presumed to have intended it and the courts could restore it if changes had removed it from his bequest. Jessel was the last Master of the Rolls to be actively interested in the reform of charity law. Westbury, who had left office under a cloud in 1865, was almost the last Chancellor. Cranworth in succeeding him returned to the Woolsack for only eleven months, and was within two years of his death. Hatherley and Selborne were occupied with the re-organization of the courts rather than the reform of the law itself. Both Selborne and Cairns, who between them held the Great Seal from 1872 to 1885, defended the founder's

[58] *In re Buck* (1895), 65 L. J., Ch. 881, seems to have been the most important case between 1881 and 1910. The decision upheld a *cy-près* application of surplus funds, but laid down rather narrow rules for the definition of a surplus. The precedent here was the decision by Jessel's predecessor in *Attorney-general* v. *Love*. V. *Tudor on Charities*, 146.

[59] L. R., 2 Ch. 132, 124.

[60] L. R., 18 Ch. D., 310-22.

authority as the formal basis of the law of charitable trusts. [61] On the whole it is remarkable how quickly the cause of charity law reform ceased to influence the bench.

While this was a bar to the redefinition of charitable trusts, it did not prevent courts from considering public interest in *cy-près* applications. Their view of it was not particularly wide, any more than their consideration of it was made an active principle. The practice probably owed far less to the law reformers than to the promoters of scientific charity. Well before *In re Campden Charities* that movement had become strident in its condemnation of doles; in this it was joined by archbishops as well as by royal commissions, and judges seem not to have been immune. For in only one particular was the courts' consideration of public interest in *cy-près* applications thoroughly clear: it was the ground on which they preferred education to doles. Fifteen years before the Campden Charities Case Vice-Chancellor Kindersley had been unequivocal: [62] "I think, by common consent, it is established at the present day that there is nothing more detrimental to a parish, and particularly to the poor inhabitants of it, than the having stated sums periodically payable to the poor of that parish by way of charity, and when the funds increased therefore would not augment the part to be applied for the benefit of the poor." Twenty years later the solicitor-general thought the courts had a confirmed tendency to prefer educational to eleemosynary charities. [63] The tendency had been long in growing. When Lord Macnaghten in 1891 put education in a class by itself as a charitable object, he was not being original. His famous classification in *Commissioners of Income Tax* v. *Pemsel* derived from one by Sir Samuel Romilly as counsel; and Romilly had been dead for seventy-three years. [64] The second Campden decision did not begin the tendency, it only avowed its impact on the *cy-près* doctrine.

This second decision was balm to the Charity Commission, as the first had been a blow. As the principal maker of *cy-près* applications, the Commission was of course pleased to see their scope widened. There was also a second success in the judgment. In an earlier case Jessel had addressed himself to section five of the Charitable Trusts Act, 1860, which had been amended in committee so as to forbid the Commission to exercise its *cy-près* jurisdiction in cases it thought contentious. His predecessor, Romilly, had supposed that the section meant what it said. [65] Jessel, giving his judgment on *In re Burnham National Schools* (1873), had discounted Romilly's statement as *obiter dictum* and had interpreted the section to mean "that the Charity Commissioners should not be compelled to take upon themselves the exercise of the jurisdiction conferred by the Act in any case in which

61 HOBHOUSE, *op. cit.*, 83.
62 *Attorney-general* v. *Marchant* (1866), TYSSEN, *op. cit.*, 61.
63 Sir Horace Davey's evidence before the Select Committee on the Endowed Schools Acts, Question 5126, *Parliamentary Papers*, 1886, Session 1 (191), ix.
64 William, Lord BEVERIDGE, *Voluntary Action* (London, 1948), 194, note 1.
65 *In re Hackney Charities, Tudor on Charities*, 245.

they considered that it could be so much better dealt with by a judicial court that it would be improper for them to exercise that jurisdiction". If the Commission wanted to act "this section, it appears to me, did not interfere with it at all". He therefore dismissed a petition against a scheme, finding "no such gross miscarriage, no such utter want of discretion as ought to induce a Court of Appeal to interfere in the matter". [66] The Commission's counsel in the Campden Charities Case naturally urged this kind decision upon Hall, who would admit no more than that the Commission's schemes must be examined with due regard for its great experience and qualifications. On the appeal Jessel took the opportunity to confirm his own earlier decision. Although he did not repeat his flight of fancy about section five, he did rule that the Commission's schemes could not be defeated on matters of detail. If no rule of law had been broken and no gross miscarriage of justice had taken place the court could not inquire further. Lord Justice James, in his concurring opinion, thought that the Commission's jurisdiction was the main question in the case. It was certainly the main beneficiary. The Commission had not been freed of section five, but until the Weir Hospital Case its schemes had a special position before the courts.

After 1882 the Commission's reports no longer complained of the *cy-près* doctrine. The Second Commissioner even expressed his satisfaction with it. [67] Yet the rather hesitant development apparently consolidated by Jessel's decision did not go very far. Its results did not approach the unrestricted revision of trusts after forty or a hundred years that Mill had conceded to be necessary in 1869 — and Mill thought he was defending founders. [68] The Commission's own argument in its report of 1881 would seem to require that the *cy-près* doctrine be expanded into a legal fiction, under cover of which the state could revise trusts whenever the public benefit indicated. Jessel had tried hard, but he had done nothing like that. It is probably true that the Commission, especially alarmed by the first Campden decision, had stated a stronger case than it was prepared to stick to; but even so it is hard to believe that it was silent only because the assault on the doctrine had been successful. In 1890 it could still have doubts of its *cy-près* jurisdiction, based on a Chancery decision in 1854. The trustees of a Wesleyan trust dating from 1751, the terms of which were no longer compatible with the Methodist system, applied for a scheme. The case was not contentious and the changes would leave the founder's object intact; but Chancery had rejected a similar application in *Attorney-general* v. *Clapham*. The Commission therefore resorted to a parliamentary scheme. [69] After all, it had asked for a statute and been given only a decision.

[66] *Tudor on Charities*, 245, 251.

[67] Sir Henry Longley's evidence before the Select Committee on the Charitable Trusts Acts, Questions 1258-67, *Parliamentary Papers*, 1884 (306), ix.

[68] "Endowments", in *Fortnightly Review*, April, 1869, 377.

[69] Thirty-seventh Report of the Charity Commissioners, para. 18. *Parliamentary Papers*, 1890 (c. 5986), xxvi.

IV

The Commission was not without real successes, but they had been gained on quite other grounds. The cheapness and simplicity of its procedure had begun to tell against the courts immediately after the Charitable Trusts Act of 1860. In the first ten years of that Act's operation Chancery had received 90 charity applications and the county courts eight. Meanwhile the Commission had made 3,056 orders under the Act. The last application to a county court had been made in 1874. After Jessel's decision there were to be only nine applications to Chancery during the rest of the century.[70] Now the great majority of these applications and orders were not for *cy-près* schemes but for the vesting of property and the appointment or removal of trustees. As the Commission's business grew, it appeared that the powers with which it was dissatisfied nevertheless gave it plenty to do. In 1884, making out a case for more staff and space, the Commission made an instructive review of the increase in its business. By far the largest increase — 167.8% — was in the stock held by the official trustees. The number of their separate accounts had increased by 117.5%. The increase in number of schemes was only 35%. There were also powers wider than *cy-près* under the Endowed Schools Acts and the London Parochial Charities Act; but these did not last. Not counting the Charitable Trusts Acts, the Commission had been given powers beneath rather than beyond *cy-près* by nine other statutes. Here was a gradual development far outweighing even the special consideration accorded by Jessel to the Commission's schemes. After 1881 there was to be no successful appeal against them until 1910; but then there had been only two before.[71]

The early eighteen-eighties did see the real crisis in the Charity Commission's development, but the Campden Charities Case was not the main element in it or even in the settling of the Commission's *cy-près* jurisdiction. That jurisdiction was still limited over trusts with an annual income of £50 by the necessity of an application from a majority of the trustees, and over all trusts by a right of appeal which the Commission did not control. Nine-tenths of all trusts were outside the first condition, which nevertheless interfered with the amalgamation of local charities.[72] The second condition meant that the Commission could not make a scheme likely to be appealed against because the appeal might ruin the trust.[73] In 1881 and 1883 bills were introduced in Parliament to extend the Commissioners' powers in these and in other respects. Not only did the bills fail, they occasioned an attack on the Commission. It emerged from the scrutiny of two select committees with reasonable credit but with a chastised spirit.

[70] *Tudor on Charities*, 24.

[71] Thirty-first Report of the Charity Commissioners, p. 9, *Parliamentary Papers*, 1884 (c. 3936), xxll; Twenty-eighth Report of the Charity Commissioners, *ibid.*, 1881 (c. 2862), xxviii.

[72] Report of the Select Committee on the Charitable Trusts Acts, p. x, *ibid.*, 1884 (306), ix.

[73] Sixteenth Report of the Charity Commissioners, *ibid.*, 1868-69 (4117), xvii. Better liaison with the attorney-general seems to have been the remedy for this. See Report of the Select Committee on the Charitable Trusts Acts, p. xi.

On the same day — 24 May 1881 — that Jessel delivered his judgment, the House of Lords emasculated the Charitable Trusts (Amendment) Bill in committee. In July Gladstone gave up hope of its passage and withdrew it. Re-introduced in the session of 1883, it was again withdrawn in July. The Commission wanted a third try in 1884; but by then it was more anxious for a full inquiry to dispel ". . . the misapprehensions which have been widely, and, as we cannot but think, mischievously entertained as to the law by which Charities are regulated and as to the practice which has been adopted by the Courts of Equity and by our Board in giving effect to its provisions". [74] The Commission, which had once sung its own advantages, was now reduced to pleading its own regularity. And behind the suspicion of irregular behaviour lay dislike of its whole position. The first Charitable Trusts Bill in 1843 had been opposed for giving judicial powers to the executive, and had failed. [75] When the Commission was created, the main objection to having its members eligible to sit in Parliament had been that its work was to be partly judicial. [76] The not very profitable debate on the nature of its powers was still going on in 1894. Besides, the ineffectiveness of the parliamentary Commissioner left his colleagues in an increasingly uncomfortable position. An active independent board was naturally suspect in a Parliament becoming aware that an administration could escape from political control. The Poor Law Commission, the prototype in 1853, was in 1871 put under the new Local Government Board with a minister to answer for it. The Charity Commission however moved the other way. Its parliamentary member had usually held office — the not very exalted one of vice-president of the committee of the Privy Council on education. The Commission's schemes under the Endowed Schools Act of 1874 put him in an anomalous position: he was responsible for drafting them in one office and reviewing them in another. He therefore ceased to attend. The Commission was thus without a spokesman in 1881 and 1883, and could plead its case only by being investigated. When the parliamentary Commissioner in 1887 first began to attend with any regularity, he was without office. He answered questions in the House of Commons but was not responsible to it as the head of a department. [77] The Commission therefore had to face both Parliament and the Treasury without the support of the party in power.

At the same time, the tide of charity reform had ceased to run altogether in its favour. The protagonists of scientific charity, and especially the Charity organization Society, had in the decade of the seventies made their condem-

[74] Thirty-first Report of the Charity Commissioners, p. 2, *Parliamentary Papers*, 1884 (c. 3936), xxii.

[75] *Hansard*, 3rd series, lxix, 843-47.

[76] *Ibid.*, 3rd series, cxxix, 1478-90.

[77] The parliamentary Commissioner was content with his position, but the Chief Commissioner was not. J. W. Lowther's evidence before the Select Committee on the Charity Commission, Questions 2320, 2325-26; Sir Henry Longley's evidence before the Select Committee on the Charity Commission, Questions 2320, 2325-26; Sir Henry Longley's evidence before the same committee, Questions 142-70, 174-84, *Parliamentary Papers*, 1894 (221), xi.

nation of doles a part of the current attack upon outdoor relief. Distinguished as the founders of the Society were for moral fervour and intellectual integrity, their results were unfortunate. The Society itself became a sort of *laisser-faire* sect, ultimately repudiated by most people interested in charities and by some of its own members. It succeeded however in discrediting personal almsgiving and in replacing it by a doctrine "repellent in its apparent hardness".[78] Although the doctrine carried conviction it brought little comfort. "How one longs", ran a complaint in 1879, "for some outpouring of comfortable, unhesitating, old-fashioned, joyous bounty — not judicious administration of charity, but a good hearty swing of generosity — if only it might be innocently indulged in."[79] Even active members of the Society did not always remember that the poor starved because of the alms they received. At one of its early committees a member gave an old woman sixpence while the chairman was in the act of explaining why she was not a "helpable" case. Afterwards he shed tears of remorse, but then he was unusually well instructed. The very man who reprimanded him later left the Society because it substituted "a relief-giving machine for a helping hand".[80] Scientific charity became a cause with which few politicians cared to associate themselves. Parliament and enlightened charity were divorced. Opposition to the Charity Commission now drew not merely upon conservative but upon humanitarian feeling. When Joseph Warner Henley, who had contested the Charitable Trusts Acts of 1853 and 1860, was rendered harmless by deafness more aggressive members were ready to replace him.

Of these the Birmingham politician Jesse Collings was the most formidable, or at least the most dedicated. His hostility seems to have been first aroused over the Allotments Extension Act, 1882, a measure by which the lands of dole charities were to be let as labourers' allotments, and to which he was devoted. He accused the Commission of helping trustees to evade the Act. The truth was that the Act was unenforceable[81] although the Commission had been a little lacking in zeal for it. Then came a conflict with the corporation of Birmingham over a charity scheme[82] an attempt by Collings to cut the Commission's estimates and finally, in 1894, his full-scale attack before the Select Committee on the Charity Commissioners.[83] Their object, he charged, was "the spoilation of the poor". Only the Education Act of 1870 had restrained them from an attempt to destroy all free (i.e. gratuitous) education, and they were still engaged in robbing the poor to educate the middle and upper classes. Henley had been suspicious,

78 Beatrice WEBB, *My Apprenticeship* (London, 1926), 195.

79 Caroline Emilia STEPHEN, "Receiving Strangers", printed in M. GOODWIN (ed.), *Nineteenth Century Opinion* (Harmondsworth, 1951), 71.

80 Mrs. S. BARNETT, *Canon Barnett, his Life, Work and Friends,* 2 vols. (London, 1918), i, 29; ii, 263-64.

81 Second Report of the Select Committee on the Charitable Trusts Acts, p. viii, *Parliamentary Papers,* 1884-85 (33), viii.

82 Longley's evidence before the Select Committee on the Charitable Trusts Acts, Questions 1332-41, *ibid.,* 1884 (306), ix.

83 Questions 3697, 3704-9, *ibid.,* 1894 (221), xi.

but never savage. Scientific charity was reaping the whirl-wind. Not until it merged into a new movement for social security did it become a political asset.

Meanwhile the Charity Commission was the object of distrust from another point of view. Its incursions into local affairs can never have been popular, and it had grown used to a good deal of passive resistance. The Burston-le-Willows Charity quietly ignored its demands for years. [84] The Griffith Amerideth Charity, Exeter, was aggrieved to have the dividends on its funds withheld by the official trustees. Founded in 1556 to buy shrouds for prisoners executed in Exeter, it had responded to the shortage of prisoners by using its income to buy petticoats for old women, without the formality of a *cy-près* scheme. [85] Local initiative, the trustees no doubt felt, was best. Affected by the course of municipal reform, many charity reformers were coming to agree. "We must", wrote Kenny, "rely on metropolitan authority for supervision, but we must beware of trusting to it for motive power." To this characteristically judicious statement Hobhouse gave characteristically decided support. [86] Local initiative, thus reinforced, showed itself formidable against the Charitable Trusts (Amendment) Bill of 1881. The Royal Society of London for Improving Knowledge got itself exempted from the Charitable Trusts Acts. The Corporation of London procured petitions against the bill. Lord Cairns, making the main speech against it in committee, denounced it as "something in the nature of a rebuff to all charity trustees throughout the Kingdom". Salisbury saw in it "a gigantic scheme of centralization". [87] Even the Select Committee on the Charitable Trusts Acts did not support the Commission against municipal authorities. Notwithstanding the Second Commissioners argument against having them prepare schemes, the Committee recommended it. Local wishes were even set up as the substitute for private interest in charity administration. [88]

Both these turns of opinion were made formidable by their connection with the new radicalism, which brought Joseph Chamberlain into the Cabinet in 1880. Its incipient class-consciousness, useful at the polls after the Reform Acts of 1884 and 1885, was strong enough to encourage resentment against charity accompanied by Olympian pretensions. "Gas-and-water" socialism contained the seeds of a collectivism to which the classical tradition of charity reform was as yet unattuned. Above all, municipal freedom had been its origin and was still its shibboleth. To make matters worse for the Commission, simple enduring conservatism, which had worn out the movement for charity law reform, reinforced the new source of hostility. Charity accompanied by scientific cant offended it more as the cant grew louder in the 'seventies. It had always preferred a dead to an interfering hand. Ensconced in Parliament, in the Church, and in thousands of boards of trustees, it

84 *Hansard*, 3rd series, cclxiv, 1913.
85 *Ibid.*, 3rd series, cclxxx, 545-46.
86 KENNY, *op. cit.*, 154. HOBHOUSE, *op. cit.*
87 *Hansard*, 3rd series, cclxii, 834; cclxiii, 1134; cclxi, 1183-90, 1190-92.
88 Report of the Select Committee on the Charitable Trusts Acts, Questions 1237-38, and p. xi, *Parliamentary Papers*, 1884 (306), ix.

resisted central control over charities with a perseverance that the Commission could not match. When the problems of Ireland and empire brought Chamberlain into Salisbury's third Cabinet nine years after leaving Gladstone's, what was left of his following accepted the Conservative label. The ground had been prepared by the social legislation of Salisbury's second ministry; especially the Local Government Act of 1888 which created County Councils, the Technical Instruction Act of 1889 which made them the authorities for that subject and the abolition in 1891 of fees in elementary schools. Paternalism, if sufficiently discreet, could find points of resemblance to collectivism, if sufficiently local. It was to a foreshadowing of this political re-alignment that the Charity Commission's last hope of wider powers fell victim.

In 1887 the Treasury entered the field against it.[89] Finally, it lost control of the only permanent breach in the *cy-près* doctrine, the power under the Endowed Schools Act to divert funds to educational objects without reference to the will of the founder. The Commission had been given that power in 1874; it lost it on 7 August 1900, by an order-in-council under the Board of Education Act of 1899. Well before this the Commission had lost not only the chance but the will to enlarge its mission. In the tactful words of the select committee of 1894, it showed "in recent years especially, a juster sense of the requirements of public opinion".[90] Cranworth's bill of 1853 was not even a memory. The limited usefulness of the parliamentary Commissioner was of concern less because he did not ensure the success of parliamentary schemes than because he did not effectively defend the Commission in the House of Commons. Ignoring Jessel's invitation, the Chief Commissioner disavowed any desire to settle controversial schemes. The Commission's reports became increasingly formal and dull: solid accounts of useful work, but without the old overtones of self-congratulation, missionary zeal or indignant self-defence.

The attack on the *cy-près* doctrine had indeed been the beginning of this process. It had represented a lesser objective than the plan of reform by parliamentary schemes, a narrower range of power than Cranworth had proposed, a particular rather than a general assault on the law. The attack cannot be called a failure, although there is no evidence that it was the direct cause of the judicial widening of the *cy-près* power. The most striking thing about *cy-près* applications to the courts after 1881 is not the leniency with which they were regarded but the infrequency with which they were made. This was due not only to the Commission's superior procedure in the first instance but also to its care in avoiding appeals; that is, to its self-restraint as well as to its efficiency. As a result, no great weight of precedent was built up to support the Campden decision; the judicial widening of the

[89] The Treasury Minute of 25 November 1887 is in the Report of the Select Committee on the Charity Commission, Appendix A, *Parliamentary Papers*, 1894 (221), xi. See also Questions 3347, 3351, 3356, 3915 and 3926.

[90] Report of the Select Committee on the Charity Commission, para. 7, *Parliamentary Papers*, 1894 (221), xi.

cy-près doctrine therefore remained tentative and was reversed by the Weir Hospital Case in 1910. The will of the judges submitted itself once more to the will of the founder. Except for Westbury and Jessel, they had always responded more to the scientific dislike of doles than to the case for a reform of charity law in general. A judicial redefinition of charitable trusts would probably have been too great a change to be reversed in this way, but the smaller change needed statutory authority to survive in the otherwise unreformed body of charity law. As it turned out, the widening tendency passed with the waning of the charity reform movement. The Commission itself declined with the movement that had given it impetus. Further, charity reform acquired new connections that did the Commission no good. Failing to adjust itself to the rising tide of collectivism, charity reform became as repulsive as the poor law. Attaching itself to municipal reform, it ceased to support a central agency. And it took these new departures without ever having disarmed its original opposition. The *laissez-faire* strain in it managed to become antediluvian without becoming embedded in the conservative ethos. After the Campden decision the Charity Commission was satisfied less because it had got what it wanted — which was true enough — than because it was lucky to keep what it already had. Its satisfaction was the mark of resignation rather than of success. The Charity Commission, in a word, had come to terms with an uncharitable world.

TABLE OF CASES

The order is that of their first appearance in the text.

1.	*A.-g.* v. *Boucherett* (1855)	*Tudor on Charities,* 145.
2.	*Moggeridge* v. *Thackwell* (1802)	*Ibid.,* 140, 97-8, 98-9.
3.	*Mills* v. *Farmer* (1815)	*Ibid.,* 140, 97-8, 98-9.
4.	*Da Costa* v. *De Pas* (1753)	Ambler, 228.
5.	*A.-g.* v. *The Ironmongers' Company* (1844)	*Tudor on Charities,* 205-8.
6.	*In re Ashton's Charity* (1859)	Beavan, 117.
7.	*A.-g.* v. *Lawes* (1849)	Tyssen, *Law of Charitable Trusts,* 184-92.
8.	*A.-g.* v. *The Dedham School* (1857)	*Ibid.,* 181.
9.	*Philpott* v. *St. George's Hospital* (1854)	27 Beavan, 107.
10.	*Clephane* v. *The Lord Provost of Edinburgh* (1864)	L. R., 1 H. L. Sc. App., 417; 4 Macqueen, 603.
11.	*In re Latimer's Charity* (1869)	L. R., 1 Eq., 353.
12.	*In re Campden Charities,* no. 2 (1881)	*Tudor on Charities,* 214-16; L. R., 18 Ch. D., 322; 52 L. J., Ch., 780.
13.	*In re Buck* (1895)	65 L. J., Ch., 881.
14.	*In re Weir Hospital* (1910)	L. R., 2 Ch. D., 124.
15.	*In re Campden Charities,* no. 1 (1880)	L. R., 18 Ch. D., 310; 50 L. J., Ch., 646.
16.	*A.-g.* v. *Marchant* (1866)	Tyssen, *Law of Charitable Trusts,* 61.
17.	*In re Hackney Charities* (1869)	*Tudor on Charities,* 245.
18.	*In re Burnham National Schools* (1873)	*Ibid.,* 245, 251; L. R., 17 Eq., 241.