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# THE CHARITABLE STATUS OF RIFLE CLUBS: OUT WITH A BANG?

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**Tennyson's "Rifle Clubs"**

"Form, Form, Riflemen Form!", wrote Alfred Lord Tennyson in 1859. Tennyson in fact first wrote a poem with similar words to these in 1852, immediately after Louis Napoleon (later Napoleon III) had seized power in France in a coup d'état. The poem (originally entitled "Rifle Clubs"!) was unpublished, but a version of it was printed on 9th May 1859 in *The Times* at a time of another "scare" from Napoleon III.[2] This time there was a "war scare"; Napoleon III was thought to be ready to invade Britain; and the British Army, it was feared, was no match for the large conscript army of the Second Empire.

The publication of the poem in *The Times* in 1859 predated the volunteer movement, but before long rifle clubs - seen as a means of providing the genesis of what might now be called a Home Defence Force - were widespread. Defence at home and victory in the Empire were both necessary; this reflected the realisation in Britain that there was need for volunteers who were of some military value, equipped to fight against the conscript armies of the Continental European powers. The Army itself was to fight not only against these forces, but also against insurgents in the Empire whose weapons might be more threatening than assegais or knobkerries.

Britain had been used to "winning"; W.S. Gilbert, in *Patience*, first performed in April 1881, could speak of the "skill of Sir Garnet [Wolseley] in thrashing a cannibal", but, as the battle of Isandlwhana had recently shown, even that was no longer certain.

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2 Tennyson also wrote another poem on a similar topic in the 1850s, "Britons Guard Your Own". See, generally, *The Poems of Tennyson*, ed C. Ricks.

## Battle of Majuba Hill

Even more embarrassingly, Major General Sir George Pomeroy Colley, the Governor of Natal, commanding a force of British regulars, was defeated and killed by a force of Boer farmers at the Battle of Majuba Hill, on 27th February 1881, in what became known as the First Boer War. The effect on Britain was considerable: Victorians were not used to defeat, and, although "less than a hundred Britons died, ... the news of a humiliating reverse touched off an explosion of that Jingo sentiment which Gladstone (the then Prime Minister) was doing his best to exorcise."[3]

Apart from the political implications of Majuba, there were military ones. The British soldiers, resplendent in their scarlet uniforms, and trained for platoon firing, were no match for the Boer farmers whose conventional attire enabled them to blend in with the South African veldt, and who, although undisciplined, were all, as individuals, marksmen of a very high order.

## *Re Stephens*: A Piano Tuner's Bequest

Historians speak of the profound effects of Majuba, but no-one seems to know why Mr Henry Stephens, a piano tuner of 13, Cambridge Terrace, Hyde Park, London, was himself so concerned. Under his will, dated 17th January 1888, he left a fund to

> "the National Rifle Association, of which the Duke of Cambridge [the Commander-in-Chief of the Army] is president ... to form a fund to be called the Stephens' Prize Fund, to be expended by the council for the teaching of shooting at moving objects in any manner they may think fit, so as to prevent as far as possible a catastrophe similar to that at Majuba Hill."

Was this gift charitable? Kekewich J held it was.[4] First he stated that he could not comment on the objects of the National Rifle Association, as there was no evidence as to those. Second, he doubted that "shooting at moving objects" was charitable; but he then relied on a "distinct object" mentioned by the testator.

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3 Philep Magnus, *Gladstone, a Biography*, p.286.

4 *Re Stephens* (1892) 8 TLR 792. The reports at [1892] WN 140 and (1892) 36 SJ 703 are much briefer.

> "It was a matter of English history that at Majuba Hill the English soldiers were defeated, and defeated in a great measure because their opponents were excellent rifle shots, and made it impossible for them either to advance or retreat. That was one great cause of the disaster, and it might to some extent have been averted if the English soldiers could have returned the same calm fire as was directed against them. The object in the testator's mind was clear. He desired that Englishmen should be taught to shoot with those particular weapons which were used in war for the destruction of their enemies and the protection of themselves. The testator did not say that "soldiers" or any other particular class of persons were to be taught. What he means was that accurate shooting was to be taught amongst Englishmen in general - an object which would be promoted directly or indirectly in the Army - and so a repetition of the catastrophe at Majuba Hill would be averted. That was an excellent object ... This gift was to the advantage of the United Kingdom and to all Englishmen, not only to those who were likely to be shot at, but to all subjects of her Majesty. In his opinion, therefore, this must be supported as a good charitable gift."

Kekewich J did not explain in detail how this gift fitted the definition of charity; but, perhaps with the advantage of hindsight, two possible explanations emerge. First, the Preamble to the Statute of Charitable Uses 1601 referred to "setting out of soldiers" (i.e., payment for them and preparing them for military service); this meant that any gift which would ease the burden of taxation on the rest of the country, and was in effect for the defence of the realm, could be charitable; likewise, any gift which increased the efficiency of the armed forces could also be regarded as charitable. It is of passing interest to note that at the time of the judgment, Kekewich J's nephew, Robert Kekewich, was a serving army officer; later, with the rank of Colonel, he successfully commanded the British defenders in the siege of Kimberley during the Boer War.

**Defence of the Realm**

Within the next few years, other cases, on analogous facts, followed: in *Re Lord Stratheden and Campbell*[5] Romer J, *arguendo*, stated that a gift of £100 to the Central London Rangers (a volunteer corps) was charitable;[6] in *Re Good*[7] a gift to enable a library to be purchased for the officers mess, any surplus to be used for the provision of plate for the same mess, was held charitable; and in *Re Gray*[8] the gift of a sum to form the nucleus of a regimental fund for the promotion of sport (by which the testator meant only shooting, fishing, cricket, football and polo) was also held charitable. More recently can be added *Re Driffill*,[9] where a gift to provide for the

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5 [1894] 3 Ch 265.

6 Ibid at 266.

7 [1905] 2 Ch 60.

8 [1925] 1 Ch 362.

9 [1950] Ch 92.

defence of the United Kingdom against hostile aircraft was also regarded as charitable. Perhaps the most surprising example is *Re Corbyn*,[10] where a fund to enable selected boys from a training ship to send to other establishments with a view to their becoming officers in the Royal Navy or Merchant Navy was likewise saved: the preparation of cadets for the Royal Navy was justified by reference to the "setting out of soldiers" in the Preamble to the Statue of Elizabeth; and the preparation of those for the Merchant Navy was justified - not only in time of war - by reference to the necessity of a merchant marine which was itself essential to a community that was not self-sufficient in food or other essentials of life.

All these cases (although at first instance) therefore suggested that any gift which furthered defence purposes, was likely to find judicial acceptance. However, in *IRC v City of Glasgow Police Athletic Association*,[11] where the issue was whether a police athletics association was charitable (the answer was in the negative), there were some comments on some of the cases cited above. Lord Normand accepted the principle that gifts exclusively for the purpose of promoting the efficiency of the armed forces were charitable, but doubted whether cases such as *Re Good*[12] and *Re Gray*[13] were of that nature.[14] Lord Reid expressed views of a very similar nature.[15] Lord Oaksey (who dissented) cited *Re Good* and *Re Gray* without criticism.[16] The criticisms of the cases are not, perhaps, surprising in the context of the *Glasgow Police* case: what were, in essence, ancillary activities to the main military purpose of defending the realm had been regarded as charitable, whereas an ancillary purpose to a police force, was not. Although *Re Stephens*[17] was not cited directly, the fact that it was not the subject of comment indicates, perhaps, that the more directly perceived link between shooting and the army was sufficient to exempt the case from criticism.[18]

Indeed, the Charity Commissioners have themselves more recently regarded the Old Contemptibles Association as charitable.[19] The first major battle in which the Old Contemptibles - so called because Kaiser Wilhelm II referred to the British Expeditionary Force sent over to France in 1914 as a "contemptible little army" - was Mons. Of that battle, Barbara Tuchman wrote, " ... the Germans offered the most

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10 [1941] Ch 400.

11 [1953] AC 380.

12 [1905] 2 Ch 60.

13 [1925] Ch 362.

14 [1953] AC 380 at 391. *Re Stephens* was not considered.

15 [1953] AC 380 at 402.

16 [1953] AC 380 at 397.

17 (1892) 8 TLR 792.

18 Although *Re Stephens* was not cited, the cases of *Re Good* and *Re Gray*, which were, contain discussion of it.

19 [1964] Ch Com Rep paragraph 60.

perfect targets to the British riflemen who, well dug in and expertly trained, delivered fire of such rapidity and accuracy that the Germans believed they faced machine guns."[20] The Charity Commissioners have also accepted that the mixing of officers and ex-officers of the Royal Air Force to foster a sense of tradition is charitable.[21]

**Provisional View of Charity Commissioners on Rifle Clubs**

Against this background, it is surprising to find that the Charity Commissioners are apparently taking the - admittedly provisional - view that Rifle Clubs are not charitable and that applications by such clubs for charitable status will not be accepted.[22] Obviously, every case must be considered on its merits, and, in particular, on the precise terms of the gift, but the National Small Bore Rifle Association does provide a specimen constitution for a Rifle Club, which contains the following and which (it is assumed) the applicant club had adopted:

> "The object of the Club is to encourage skill in rifle shooting by providing instruction and practice in the use of the small-bore rifle to any of Her Majesty's subjects so that they will be better fitted to serve their country in the Armed Forces, Territorial Army or other organisation in which their services may be required in the defence of the realm in times of peril."

The relationship to the decision in *Re Stephens*[23] can be clearly seen; the aim is to enable anyone to learn to shoot a rifle so as to be better fitted to defend the realm. Why, therefore, are the Charity Commissioners apparently wishing to take a different view? It is surely beyond doubt that gifts for "patriotic proposes" are charitable: it must therefore be the view of the Charity Commissioners, that the purposes of a Rifle Club are no longer charitable. It must, of course, be conceded that the scope of charity may change, and that purposes that were once charitable, are not necessarily to be so regarded for ever.[24] Judges accept the need to

> "keep the law of charities moving according to how social needs arise and old ones become obsolete or satisfied"[25]

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20 Barbara Tuchman, *The Guns of August - August 1914* p.299. Mr Stephens would have been proud.

21 [1967] Ch Rom Rep, paragraph 95.

22 See Press Release, February 1992.

23 (1892) 8 TLR 792.

24 See, e.g., *National Anti-Vivisection Society v IRC* [1948] AC 31, and now Charities Act 1960 s.13(1)(e)(ii). The point is developed further below.

25 *Scottish Burial Reform and Cremation Society Ltd v Glasgow City Corporation* [1968] AC 138 at 154E, per Lord Wilberforce.

and so what may have charitable (and, if the report of *Re Stephens* is complete, assumed to be charitable without proof) may call for investigation in a more sceptical age.

The author does not profess any military skill or knowledge, but the following points may be made. First, there is evidence from the Falklands conflict, from the Gulf War, and from the civil war in Bosnia-Herzegovina, that the skill of the individual infantryman is still as vital as ever. It is of course the case that many of the weapons now used by the modern Army are different from those used by the rifle competitor,[26] but that does not mean that the basic skills of gun-handling and marksmanship are not relevant thereto. Second, although the modern Army is such that the idea of a semi-trained, unofficial "reserve" seems somewhat unreal, why is it not for the public good that there exist men and women who are skilled in a basic military art, and whose skills are honed in an environment - that of a rifle club - whose activities are not only legal but, in effect, monitored through the controls imposed by the firearms legislation.[27] The last point is not an unimportant one: firearms, in the United Kingdom, are receiving a bad press: whereas there is evidence which suggests that firearms are more widely available to the police than has been the case in the past, the controls on civilians who wish to possess either firearms or shotguns have increased,[28] even though the principal legislation on the subject still states that:

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[26] Indeed, semi-automatic rifles are now separately treated: Firearms Act 1968 s.5, as amended by Firearms (Amendment) Act 1988 s.1.

[27] See Firearms Act 1968 s.11(3); Firearms (Amendment) Act 1988 s.15(1).

[28] Firearms Act 1968 ss.26(2), 28; Firearms (Amendment) Act 1988 s.3.

> "A firearm certificate *shall be granted*[29] if [the Chief Constable] is satisfied that the applicant has a good reason for [purchasing, possession of a firearm]"[30]

While one can sympathise with the view that criminals should not have access to weapons, is the operation of a well-organised rifle club (which, by definition does not use shotguns - sawn off or otherwise - or hand-guns) likely to facilitate the occurrence of armed crime?

**Benignant Construction Principle**

There are, moreover, two general points. It is well-established that in construing trust deeds the intention of which is to set up a charitable trust, a benignant construction should be given if possible.[31] Second, as considered earlier, it is the case that what was charitable in one age may not be charitable in another. This matter was considered at some length by Lord Simonds in *National Anti-Vivisection Society v IRC* [1948] AC 32. Before a purpose, hitherto regarded as charitable could no longer be so regarded, the purpose had, according to Lord Simonds, be one to be "greatly to the public disadvantage",[32] "injurious to the community",[33] or "truly detrimental".[34] In *Gilmour v Coats*[35], Lord Simonds stated:

> "But I would ask your Lordships to say that it is only a radical change of circumstances, established by sufficient evidence, that should compel the court to accept a new view of this matter."[36]

This is entirely consistent with an earlier passage in his speech in *National Anti-Vivisection v IRC* in which he states that if a purpose is broadly within a familiar category of charity, it will be assumed to be for the benefit of the community and thus

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29 Author's italics.

30 Firearms Act 1968 s.27(1).

31 *Weir v Crum-Brown* [1908] AC 162 at 167, per Lord Loreburn LC; *IRC v McMullen* [1981] AC 1 at 14, per Lord Hailsham LC. In the latter case, Lord Hailsham is prepared to extend the maxim beyond charitable *trusts*, so there would seem no reason why the argument could not be applied to a club's constitution.

32 [1948] AC at 65.

33 [1948] AC at 69.

34 [1948] AC at 74.

35 [1949] AC 426.

36 [1949] AC at 433.

charitable, unless the contrary is shown.[37] These arguments, it is submitted, are sufficient to remove any doubt that might remain as to the continuing validity of *Re Stephens*.[38]

**The Scope of `Sport'**

Even if the above arguments are not accepted, however, there is another -somewhat more controversial - line of approach. Both courts and authors have recently considered the problems of sport: see e.g., *IRC v McMullen*[39] where the House of Lords were not prepared to extend the charitable frontiers of sport beyond those in educational institutions; *Guild v IRC*,[40] where a gift to a sports centre for "some similar purpose in connection with sport" was held charitable within the Recreational Charities Act 1958 s.1.[41]

At present the position seems to be that a gift for sport *per se* is regarded as non-charitable. The authority always cited for that is *Re Nottage*.[42] *Re Nottage* involved the provision of a cup for yacht racing; at that time, yacht racing was a sport for the rich;[43] there was no direct authority which supported the idea that sport was charitable and in the Court of Appeal, Rigby LJ, at least, was unimpressed with the idea that there was a public purpose in providing a prize to be competed for by yacht owners.[44] However, the provision of parks, playing fields and recreation grounds generally has been held to be charitable: *Re Hadden*.[45] More recently, the Charity Commissioners had considered that the Oxford Ice Skating Association was charitable.[46] The Association had as its object the provision - or assistance in the provision - of an ice-

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37 [1948] AC at 65.

38 (1892) 8 TLR 792.

39 [1981] AC 1.

40 [1992] 2 All ER 10.

41 Recent articles include Della Evans, 1 Trusts Law & Practice 22; P J Clarke, 1986 NLJ Annual Charities Review, p.10; H A P Picarda, 1988 NLJ Annual Charities Review p.iv.

42 [1895] 2 Ch 649; CA, affirming Kekewich J - the judge in *Re Stephens*.

43 See, e.g., A.W.B. Simpson, *Cannibalism and the Common Law* pp.13-17; and cf *Clarke v Dunraven (Earl)* [1897] AC 59.

44 [1895] 2 Ch at 656.

45 [1932] 1 Ch 133; and see *Re Morgan* [1955] 1 WLR 738.

46 [1984] Ch Com Rep p.10.

rink in Oxford; and the Commissioners made their decision, not only on the basis of the Recreational Charities Act[47] but also on the basis of the general law. The legal position is thus that the provision of premises for sport is charitable, but that assistance with the sport itself is not. The Charity Commissioners themselves tried to avoid that conclusion: and they held that whereas "mere sport" was not charitable, sport which was directed to an end which benefited the public was charitable. But this, of course, takes us round in a circle. How is it to be decided if sport provides some other "benefit"? In an age of increasing leisure, with increasing concern for health and fitness, why is not any sport regarded as charitable? If the encouragement of aesthetics amongst adults is charitable[48] why should not the encouragement of physical - and mental - skills be so regarded? The broad view that is now being taken of the Recreational Charities Act 1958[49] also supports this broad approach. There is also assistance from across the Atlantic: in *Re Laidlaw Foundation* (1984) 13 DLR (4th) 491, the High Court of Ontario held that the promotion of amateur athletic sports was charitable. The trial judge relied on the English authorities, and referred specifically to the Preamble to the Statute of Elizabeth; the High Court preferred to rely on an Ontario statute which appeared to define charity by reference to the criteria in *Commissioners of Income Tax v Pemsel*.[50]

## Conclusion

In short, therefore, the provisional views of the Charity Commissioners seem misguided, both in terms of principle and precedent. The law of charities, as has often been said, is a jungle; and fine - and often arbitrary distinctions - have to be drawn, but on this occasion, both precedent and principle seem to point to one answer: the maintenance of the status quo.[51]

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47 Which, as *Guild v IRC* [1992] 2 All ER 10 has since shown, they were entirely correct to do.

48 cf. *Royal Choral Society v IRC* [1942] 2 All ER 101; *Re Delius* [1957] Ch 299.

49 see, e.g., the Court of Appeal in *IRC v McMullen* [1979] 1 All ER 588, particularly the dissent of Bridge LJ at 597-598; this analysis was expressly not dissented from when the case reached the House of Lords: [1982] AC 1; and *Guild v IRC* [1992] 2 All ER 10.

50 [1891] AC 591.

51 The author is a member of the Firearms Consultative Committee, established under the Firearms (Amendment) Act 1988. He wishes to emphasise, however, that the views expressed herein are entirely his own, and that they have no official or semi-official status whatsoever.