

21ST 16 LG R. 91
See at p. 232. 88 WN. RE. 1.75
APP. 16. LG R. A. 65
224 26 — 408

HIGH COURT

[1931.]

P.C. Ref. (1976) INSWLR 455.

Appd. C1985] INSWLR 567.
App. 97 ALR 335.

[HIGH COURT OF AUSTRALIA.]

PERPETUAL TRUSTEE COMPANY LIMITED APPELLANT;

AND

THE FEDERAL COMMISSIONER OF TAXATION RESPONDENT.

H. C. OF A. *Estate Duty—Exemption—“Public benevolent institution”—Institute for benefit of naval ratings—Charge for services rendered—Not wholly self-supporting—Deficiency met from public funds, subscriptions, &c.—Estate Duty Assessment Act 1914-1928 (No. 22 of 1914—No. 47 of 1928), sec. 8 (5).*
1931.
SYDNEY,
April 23, 24;
June 4.
Starke, Dixon,
Evatt, and
McTiernan JJ.

Sec. 8 (5) of the *Estate Duty Assessment Act 1914-1928* provides that “Estate duty shall not be assessed or payable upon so much of the estate as is devised or bequeathed or passes by gift *inter vivos* or settlement for religious, scientific, or public educational purposes in Australia, or to a public hospital or public benevolent institution in Australia or to a fund established and maintained for the purpose of providing money for use for such institutions or for the relief of persons in necessitous circumstances in Australia.”

Held, by Starke, Dixon and, *semble*, Evatt JJ. (McTiernan J. dissenting), that the expression “public benevolent institution” in sec. 8 (5) means an institution organized for the relief of poverty, sickness, destitution or helplessness.

The Royal Naval House, Sydney, is built on land made available by the Government and is used for the benefit of the petty officers and lower ratings of the navy by providing accommodation and recreation for them when ashore, and its benefits were extended to the lower ratings of visiting foreign war-vessels. Relatively small charges were made for sleeping accommodation, meals, baths, billiards and lockers, money and other valuables being taken care of without charge. Deficiencies on the year’s working were met out of an annual grant by the Federal Government and by subscriptions and donations.

Held, by Starke, Dixon and Evatt JJ. (McTiernan J. dissenting), that the Royal Naval House is not a “public benevolent institution” within the meaning of sec. 8 (5) of the *Estate Duty Assessment Act 1914-1928*.

CASE STATED.

On the hearing of an appeal to the High Court by the Perpetual Trustee Co. Ltd., executor and trustee of the will of Arthur Ernest Hezlet deceased, from an assessment made by the Federal Commissioner of Taxation under the *Estate Duty Assessment Act* 1914-1928 in respect of a residuary bequest made by the deceased to the Royal Naval House, Sydney, the parties admitted, for the information of the Full Court, facts which were stated substantially as follows:—

1. Arthur Ernest Hezlet of “Lynton,” Clarence Street, Burwood, near Sydney was at the respective dates of his will and death hereinafter mentioned seised, possessed or otherwise well entitled to considerable real and personal estate in New South Wales in the Commonwealth of Australia.

2. The said Arthur Ernest Hezlet died on 17th October 1929 and probate of his said will was on 20th December 1929 granted to the Perpetual Trustee Co. Ltd., the executor and trustee therein named.

3. By his said will the testator, after bequeathing a number of legacies not material to be herein set forth, devised and bequeathed his residuary real and personal estate to his said trustee in trust after sale and conversion of such parts of the same as did not consist of money to pay thereout certain pecuniary legacies, and subject thereto and after payment of the said legacies to pay, transfer and make over one-half of the residuary trust funds in his said estate equally between the Royal Naval House, Grosvenor Street, Sydney, and The Rawson Institute for Seamen, Sydney, and the testator directed that the whole of the probate, estate, legacy or other duty payable upon his death in respect of his real or personal estate should be paid out of his residuary estate.

4. The estate of the said testator has been assessed for Federal estate duty by the Deputy Commissioner of Taxation at a net assessable value of £45,270, on which duty has been assessed at the rate of $9\frac{1}{5}$ per cent.

5. The amount claimed for duty by the said Deputy Commissioner is £3,286—or £4,436 less an amount of £1,150, being a rebate allowed on the shares in the said estate bequeathed to the widow of the testator.

H. C. OF A.
1931.
PERPETUAL
TRUSTEE
CO. LTD.
v.
FEDERAL
COMMISSIONER OF
TAXATION.

H. C. OF A.
1931.

PERPETUAL
TRUSTEE
CO. LTD.

v.
FEDERAL
COMMISSIONER OF
TAXATION.

6. Included in the said assessable value is the sum of £5,398, being the value of the share in the residue of the said estate bequeathed by the said will to the Royal Naval House, Sydney.

7. The Perpetual Trustee Co. Ltd. as administrator of the said estate, being dissatisfied with the said assessment, has duly lodged with the Commissioner for Taxation an objection against the said assessment and has claimed that the said amount of £5,398 should not be included therein and that the said assessment should be reduced by the amount of duty attributable to the said sum.

8. The Commissioner for Taxation has considered the said objection and has disallowed the same.

9. The Royal Naval House is erected on two parcels of land situated in the City of Sydney, one of which was made available by the Government of the Colony of New South Wales in or about 1888 and the other in or about 1905 for the purpose of erecting the said Royal Naval House, and the cost of erecting the said Royal Naval House was defrayed partly by subscriptions obtained from officers and men of the Royal Navy and from the public and partly by a grant of £7,000 from the Government of the said Colony.

10. The said land was made available and the said building was erected for the benefit of the petty officers and lower ratings of the Royal Navy and for the purpose of providing accommodation and recreation for the petty officers and lower ratings of the Royal Navy when ashore.

11. Additions to the said building were made in 1907 at a cost of £9,000. The cost of the said building was defrayed partly by a grant of £1,000 by the Lords Commissioners of the Admiralty, partly by a grant of £3,000 from the State of New South Wales and partly from public subscriptions.

12. The affairs of the said Royal Naval House are governed by trustees and by a House Committee. The trustees are twelve in number, and consist of the Rear-Admiral Commanding His Majesty's Australian Squadron, the Flag Captain, the Chief Secretary of the State of New South Wales for the time being, and nine others. The original trustees were appointed by the Governor of the Colony of New South Wales. When vacancies occur among the trustees new trustees are appointed by the remaining trustees with the approval

of the Governor of the State; which approval is notified in the *Government Gazette*. The trustees are appointed for life or until resignation. The trustees receive no remuneration for their services. The House Committee consists of the trustees and of the Captain Superintendent, His Majesty's Australian Naval Establishment, Sydney, the Captains of His Majesty's Ships, the Senior Executive Officer in the Port of Sydney and the Engineer Captain, Garden Island. There is also an Honorary Secretary and Treasurer and a Superintendent. The said Royal Naval House is inspected at intervals by members of the Naval Board and other Naval Officers, and during the year 1929-1930 was inspected by Rear-Admiral W. M. Kerr, C.B., C.B.E. (1st Naval Member of the Naval Board), Captain H. J. Feakes, R.A.N. (2nd Naval Member of the Naval Board), Captain J. B. Stevenson, C.M.G., R.A.N. (Captain Superintendent Sydney), Captain W. S. Chalmers, D.S.C., R.N. (Flag Captain and Chief Staff Officer, H.M.A.S. *Australia*).

13. The Royal Naval House has no written constitution or trust deed.

14. The accommodation provided at the Royal Naval House includes a number of dormitories, a dining-room, lounge and reading-room, a gymnasium, cloak-room, locker-room, billiard-room and a social hall, which is used for amusements, lectures, concerts and other entertainments. A small charge is made for sleeping accommodation, for meals, for baths, for billiards and for the use of lockers, but no other charge is made for the use of the Royal Naval House, and the money and valuables of petty officers and men using the said Royal Naval House are taken care of without charge.

15. All petty officers and men of the Royal Australian Navy and the Royal Navy are eligible to use the said Royal Naval House, and the same accommodation is open to the petty officers and men of the warships of other countries when visiting Sydney.

16. The Royal Naval House receives an annual subsidy of £250 from the Commonwealth Government through the Naval Board. Its revenue also includes public subscriptions and charges made for beds, for meals and baths and the use of a cloak-room. The charge for beds is 1s., for shakedown 6d. and for baths 6d. The said

H. C. OF A.
1931.

PERPETUAL
TRUSTEE
CO. LTD.

v.
FEDERAL
COMMISSIONER OF
TAXATION.

H. C. OF A. subsidy of £250 per annum was increased to £500 during the years
 1931. 1928-1929 when certain warships were absent from Sydney.

PERPETUAL
 TRUSTEE
 CO. LTD.
 v.
 FEDERAL
 COMMISSIONER OF
 TAXATION.

17. The land occupied by the Royal Naval House is vested in the Minister for Public Works as constructing authority for the purposes of the *Public Works Act* 1912, and the rates on the land are paid by the State Government.

18. From 1st October 1890 to 30th June 1930, 1,735,296 men have slept in the Royal Naval House, and, during 1929-1930, 50,231 men slept in the Royal Naval House.

Annexed hereto is the statement of receipts and expenditure and annual report of the said Royal Naval House for the year 1929-1930. The statements contained in the said documents are correct.

The question stated for the opinion of the Full Court of the High Court was whether the bequest of one-fourth of the residuary trust funds in the estate to the Royal Naval House, Grosvenor Street, Sydney, is a bequest to a public benevolent institution in Australia or to a fund established and maintained for the purpose of providing money for use for such an institution or for the relief of persons in necessitous circumstances in Australia.

The statement referred to in par. 18 of the case stated showed that the receipts during the year ending 30th June 1930 consisted of takings £3,202 0s. 6d. ; subscriptions, donations, &c., £365 12s. 10d. and navy grant £250—which, together with a balance of £702 6s. 2d. brought forward from the previous year, totalled £4,519 19s. 6d. ; whilst the expenditure for the same period consisted of repairs and improvements £146 3s., house-keeping account £3,443 6s. 9d.—a credit balance of £930 9s. 9d. being carried forward. The annual report for the year in question showed that the principal items in the takings were for 50,231 beds at 1s. £2,511 11s., cloakroom charges at 3d. per package per week £210 11s., and use of lockers at 2s. each per month £394 9s. ; whilst as regards the expenditure the principal items in the housekeeping account were salary and wages £2,251, laundry £294, washing and renovation of mattresses £111. The report stated that there had been a growing tendency during the year for men, that is, naval ratings, when applying for beds to state that they had no money to pay for same, and to promise to

do so on the pay-day next following. No rating was ever refused such a request, no matter at what hour of the night it might be made ; and of the 1,243 applications of this nature made during the year under review the promises so made had been honoured in 1,035 cases.

Maughan K.C. (with him *Nicholas*), for the appellant. The Royal Naval House is a public benevolent institution within the meaning of sec. 8 (5) of the *Estate Duty Assessment Act*, and therefore the bequest made in its favour is exempt from estate duty. The general tenor of decisions is that an institution is a public institution if it benefits the whole of the public or a considerable section of it. Here the persons entitled to its benefits are a sufficiently wide section of the public to make the House a public institution. As to what is meant by “ public,” see *In re Income Tax Acts* [No. 1] (1).

[*McTIERNAN J.* referred to *Royal Masonic Institution for Boys (Trustees of) v. Parkes* (2).]

Where patients from a particular area were treated free and other patients paid, the hospital where they were treated was held to be a “ public ” hospital (*Horner v. Lewis* (3)). An institution for the relief of ladies in reduced circumstances was held to be charitable (*Shaw v. Halifax Corporation* (4)). “ Benevolent ” is wider in its purport than “ charitable.” “ Charitable ” means having goodwill or wellwishing to the poor ; “ benevolent ” means having goodwill or wellwishing to anybody (*Morice v. Bishop of Durham* (5)). The law established by the decision in *Swinburne v. Federal Commissioner of Taxation* (6) was swept away by the decision in *Adamson v. Melbourne and Metropolitan Board of Works* (7). As shown by the section the intention of the Legislature was a far-reaching one, and it is not limited to poor and needy persons. “ Benevolent ” connotes giving something for nothing and not necessarily all things for nothing. It means desirous of the good of others (*The Oxford English Dictionary*). Assistance to the poor is not a necessary ingredient of “ benevolence.” The term “ benevolent institution ” is not limited to an institution rendering

H. C. OF A.
1931.
PERPETUAL
TRUSTEE
CO. LTD.
v.
FEDERAL
COMMIS-
SIONER OF
TAXATION.

(1) (1930) V.L.R. 211, at pp. 215, 216, 220, 222.
(2) (1912) 3 K.B. 212.
(3) (1898) 78 L.T. 792.
(4) (1915) 2 K.B. 170.
(5) (1805) 10 Ves. 522 ; 32 E.R. 947.
(6) (1920) 27 C.L.R. 377.
(7) (1929) A.C. 142.

H. C. OF A.
1931.

PERPETUAL
TRUSTEE
CO. LTD.

v.

FEDERAL
COMMISSIONER OF
TAXATION.

assistance to poor persons (*Attorney-General for New South Wales v. Adams* (1)). Mere benevolence is not charity (*In re Wall; Pomeroy v. Willway* (2)). If such benevolence is for a section of the public it is public benevolence.

Jordan K.C. (with him *Roper*), for the respondent. The phrase "public benevolent institution" is not a term of art and must be considered as a whole. It is obvious that the Royal Naval House is not a benevolent institution. Such an institution is one which ministers to the needs of the poor and does so in the main, if not entirely, gratuitously. Men in the Navy who are paid, lodged and fed are not needy poor. Although the word "benevolent" may have a wide meaning it has not the same signification when included in the phrase "benevolent institution" (*Attorney-General for New Zealand v. Brown* (3)). Benevolent institutions are institutions for the relief of the needy poor (*Kelly v. Municipal Council of Sydney* (4)). As to what is meant by "benevolent asylum," see *Christ College Trust v. Hobart Corporation* (5). The class provided for at the Royal Naval House are not the poor and needy and are not provided for gratuitously. The sources of the fund subscribed for the purpose of acquiring the land and erecting the building thereon are immaterial. The Royal Naval House is an institution which provides an inexpensive club-house for the persons in question. It is no more a public benevolent institution than are the various universities. Most of the services rendered by the House are obtained by the recipients only on payment therefor; the balance-sheet shows that the House is practically self-supporting. In *Attorney-General for New South Wales v. Adams* (6) the Court, when construing the will there in question, thought that there was some antithesis to be drawn between benevolent institutions, charitable institutions and philanthropic institutions.

Maughan K.C., in reply. Public benevolence is not limited to persons in necessitous circumstances (*Moule v. Attorney-General* (7)). The Royal Naval House cannot be regarded as practically

(1) (1908) 7 C.L.R. 100.

(2) (1889) 42 Ch. D. 510, at p. 511.

(3) (1917) A.C. 393, at p. 397.

(4) (1920) 28 C.L.R. 203, at p. 207.

(5) (1928) 40 C.L.R. 308.

(6) (1908) 7 C.L.R. 100.

(7) (1894) 20 V.L.R. 314, per *à Beckett J.*, at p. 319.

self-supporting as no cognizance is taken in the balance-sheet of the cost of the land and charges in connection therewith. The cases of *Attorney-General for New Zealand v. Brown* (1) and *Kelly v. Municipal Council of Sydney* (2), referred to on behalf of the respondent, are distinguishable because they do not deal with public benevolent institutions.

H. C. OF A.
1931.
PERPETUAL
TRUSTEE
CO. LTD.
v.
FEDERAL
COMMISSIONER OF
TAXATION.

Cur. adv. vult.

The following written judgments were delivered:—

June 4.

STARKE J. The question stated for the opinion of the Court arises upon sec. 8 (5) of the *Estate Duty Assessment Act* 1914-1928. It is as follows: "Estate duty shall not be assessed or payable upon so much of the estate as is devised or bequeathed or passes by gift *inter vivos* or settlement for religious, scientific, or public educational purposes in Australia or to a public hospital or public benevolent institution in Australia or to a fund established and maintained for the purpose of providing money for use for such institutions or for the relief of persons in necessitous circumstances in Australia." This provision replaced a sub-section in the Act of 1914-1922 which read: "Estate duty shall not be assessed or payable upon so much of the estate as is devised or bequeathed or passes by gift *inter vivos* or settlement for religious, scientific, charitable or public educational purposes."

The amendment seems to have been made in consequence of the decision in *Chesterman v. Federal Commissioner of Taxation* (3)—where the Judicial Committee held that the word "charitable" in the earlier Act was used in its technical legal sense, as in the Statute of Elizabeth, and not in the narrower sense of the relief of poverty or destitution—and of the remarks of Isaacs J. in *Young Men's Christian Association of Melbourne v. Federal Commissioner of Taxation* (4). In *Adamson's Case* (5) the Judicial Committee also held that the expression "charitable institution" must be taken in its technical legal sense unless a contrary intention appear. Now we have to consider the expression "public benevolent institution." It cannot be said that

(1) (1917) A.C. 393.
(2) (1920) 28 C.L.R. 203.

(3) (1926) A.C. 128 ; 37 C.L.R. 317.
(4) (1926) 37 C.L.R. 351, at p. 359.
(5) (1929) A.C. 142.

H. C. OF A.
1931.

PERPETUAL
TRUSTEE
CO. LTD.
v.
FEDERAL
COMMISSIONER OF
TAXATION.

Starke J.

this expression has any technical legal sense, and therefore it is to be understood in the sense in which it is commonly used in the English language. There is no definition in the Act of the composite expression, nor is it to be found in any dictionary. It is, however, found in the Act under consideration in association with such institutions as public hospitals and with funds established and maintained for the relief of persons in necessitous circumstances in Australia. In the context in which the expression is found, and in ordinary English usage, a "public benevolent institution" means, in my opinion, an institution organized for the relief of poverty, sickness, destitution, or helplessness. The Royal Naval House has none of these characteristics: it is organized for the accommodation and recreation of the naval forces of His Majesty and its hospitality is also extended to the naval forces of other countries. It would surprise English-speaking people, I think, to learn that in the Royal Naval House naval forces are accommodated and entertained at a public benevolent institution.

The question stated should be answered in the negative.

DIXON J. Sec. 8 (5) of the *Estate Duty Assessment Act* 1914-1928 provides that estate duty shall not be assessed or payable upon so much of the estate as is devised or bequeathed or passes by gift *inter vivos* or settlement for religious, scientific or public educational purposes in Australia, or to a public hospital or public benevolent institution in Australia, or to a fund established and maintained for the purpose of providing money for use for such institution, or for the relief of persons in necessitous circumstances in Australia.

The question upon this appeal is whether an institution called Royal Naval House is a public benevolent institution within the meaning of the exemption. The nature and the purposes of the institution are fully described in the case stated, and it cannot be denied that it is organized and conducted out of feelings of goodwill in order to promote the comfort and happiness of the lower ranks of the Royal Navy. Because of its association with the various Governments, and because it is concerned with the naval forces of the country, it would be difficult, if it be a benevolent institution, to deny it the description "public." But, in my opinion, it is

neither promoted nor conducted for the relief of poverty, distress, suffering or misfortune, and the question is whether for this reason it lacks the qualities necessary to bring it within the meaning of the compound description "public benevolent institution." The words "benevolent institution" are commonly used in combination to denote bodies organized for the relief of poverty or of distress. Familiarity with the application of the expression to bodies of this kind inevitably tends to make the use of the phrase appear misplaced in relation to bodies which do not relieve poverty or misfortune and merit the description "benevolent" only because their objects are benignant. It is said, however, that after all "benevolent" is an ordinary English adjective, and that frequent application of a compound expression of which it forms a part to one or some of many classes of things possessing the attributes it connotes affords no sufficient reason for restricting the meaning of the expression. In such matters one must often be guided to a great degree by one's own experience in the use of terms. In the present case little help is provided by dictionaries, statutory usage, or judicial decision. For my part the application of the expression "benevolent institution" to such organizations as Royal Naval House seems odd and inappropriate. Moreover, I agree with the suggestion of my brother *Starke* that the history of the provision in sec. 8 (5) of the *Estate Duty Assessment Act* 1914-1928 is enough to show the word "benevolent" does not there possess its general descriptive meaning; because if it were given such an interpretation its application would extend in some ways far beyond the legal meaning of the word "charitable." After the expression "charitable purposes" in sec. 8 (5) of the *Estate Duty Assessment Act* 1914 received in the Privy Council in *Chesterman's Case* (1) its wide legal meaning, and after the observations of *Isaacs J.* in the *Young Men's Christian Association Case* (2), the present provision was substituted by sec. 5 of Act No. 47 of 1928. Having regard to this history of the legislation and to the considerations I have mentioned, I am unable to place upon the expression "public benevolent institution" in the exemption a meaning wide enough to include organizations

H. C. OF A.
1931.

PERPETUAL
TRUSTEE
CO. LTD.

v.
FEDERAL
COMMISSIONER OF
TAXATION.

DIXON J.

(1) (1926) A.C. 128; 37 C.L.R. 317.

(2) (1926) 37 C.L.R., at p. 359.

H. C. OF A.
1931.

PERPETUAL
TRUSTEE
CO. LTD.

v.

FEDERAL
COMMISSIONER OF
TAXATION.

Evatt J.

which do not promote the relief of poverty, suffering, distress or misfortune.

In my opinion the question in the case stated should be answered No.

EVATT J. The Royal Naval House stands on land situate in the City of Sydney. The Lords Commissioners of the Admiralty, the Government of the State of New South Wales, the officers and men of the Royal Navy and the general public of the State assisted in providing the funds necessary for the erection of the building and certain later alterations to it. The land was made available by the Government of New South Wales and the title is vested in a public authority representing that Government. The building on it is used for the benefit of the petty officers and lower ratings of His Majesty's Navy by providing accommodation and recreation for them when ashore. No written constitution or trust deed is in existence but the House is controlled by honorary trustees and committees, and representatives of His Majesty's Australian Navy assist in its control.

The services of the House are largely availed of by the petty officers and men of His Majesty's and His Majesty's Australian Navy, and when warships from foreign countries visit Sydney Harbour, the lower ratings are also allowed to use the House.

Charges are made by the governing authority of the House for sleeping accommodation, for meals, for baths, for billiards and for lockers but money and valuables of the sailors are taken care of free. The charges are described as small (everything is relative—a bath costs sixpence) but it is noteworthy that in the year 1929-1930 the amount received in respect of such charges was £3,202, while the total expenditure for that year was only £3,589, including a salary and wages bill of £2,251. No rent is paid to the Government of New South Wales and the loss on each year is apparently made up by a small grant of £250 from the Commonwealth Government and by subscriptions and donations. One special concession has been stressed in argument: when men ask for a bed for the night, they may obtain it on a promise to pay on the next pay day. These promises are usually honoured.

Is the Royal Naval House a "public benevolent institution" within the meaning of sec. 8 (5) of the *Estate Duty Assessment Act* 1914-1928? No doubt, the body both in origin and function has had a sufficiently "public" character impressed upon it. But is it a "benevolent institution"?

H. C. OF A.
1931.

PERPETUAL
TRUSTEE
CO. LTD.

v.
FEDERAL
COMMISSIONER OF
TAXATION.

Evatt J.

The House of course serves very useful purposes. It is convenient that the lower ratings in actual naval service should have an inexpensive hostel available to them when on leave from their ships in Sydney. If they take leave overnight they might otherwise have to seek for places of accommodation at hotels or other places in city or suburbs. The Naval House, no doubt, has become to a large extent the club of those who are accorded its privileges. It probably enables the officers in control of His Majesty's ships of war to get quickly in touch with men required to return at short notice from leave.

There is no element of profit-making in the concern, but the receipts from service charges make the House nearly self-supporting. It resembles in this respect, bodies founded at Australian Universities by State or governing authorities in order to benefit the undergraduates. They are sometimes self-supporting; often they are not, because charges made for services are as small as possible. Halls and rooms are there used for lectures and debates but no one (except perhaps a student in sarcastic vein at a debate) would describe them as "benevolent institutions." Yet students are as a class notoriously impecunious, much more so than the naval ratings in regular employment at a pay fixed by Government.

There are, however, very many bodies which readily answer the description of "benevolent institutions." The Benevolent Society of New South Wales provides food and clothing for those in poverty and distress, the Scarba Home takes care of deserted babies, many organizations of Church and State provide for the maintenance, housing and relief of the aged poor, orphans and those suffering from bodily or mental disease. A characteristic of most of these organizations is the absence of any charge for services or the fixing of a purely nominal charge.

Such bodies vary greatly in scope and character. But they have one thing in common: they give relief freely to those who are in need of it and who are unable to care for themselves.

H. C. OF A.

1931.

PERPETUAL
TRUSTEE
CO. LTD.
v.
FEDERAL
COMMISSIONER OF
TAXATION.

Evatt J.

Those who receive aid or comfort in this way are the poor, the sick, the aged, and the young. Their disability or distress arouses pity, and the institutions are designed to give them protection. They are very numerous—"the nobler a soul is the more objects of compassion it hath"—and they have come to be known as "benevolent institutions."

Such a phrase seems to me to be impossible to apply to the Royal Naval House at Sydney. It is in truth a cheap and convenient club-house for those in regular naval services and pay and for no one else. The public encouragement evidenced in its formation and running is in part a gesture of hospitality, in part a recognition of the debt owed by the community to those who are serving it. The rating, paying for his bed and board, using the services provided at the rates fixed, would, I think, greet the statement that he had been staying at a "benevolent institution" with amazement, perhaps with indignation. For he is not a person in distress. On the contrary he is a chosen and active protector of the nation, the object not of compassion but of admiration. Neither the public spirit of those who started and those who control the institution nor the convenience or benefit it is to the ratings, is sufficient to make it a "benevolent institution." It is probably because of the fact that it is a social institution rather than a benevolent institution that it is so attractive to naval men and so useful to the Navy itself.

I would answer the question "No."

McTIERNAN J. The appellant, which is the executor of the will of the late Arthur Ernest Hezlet, claims that a bequest of one quarter of the residuary trust funds in the testator's estate, which was bequeathed by him to the Royal Naval House, Grosvenor Street, Sydney, is exempt from the assessment or payment of estate duty under the *Estate Duty Assessment Act* 1914-1928, on the ground that the Royal Naval House is a "public benevolent institution in Australia" within the meaning of sec. 8 (5) of the above-mentioned Act. It was contended on behalf of the respondent that a public benevolent institution is an institution which ministers to the poor and needy, and that therefore on the facts and circumstances disclosed by the special case the appeal must fail. The phrase

“public benevolent institution” is not defined in the Act, nor is it a term of art. There does not appear to be any definite understanding as to what is the precise meaning of the expression. Thus the soundness of the method of approaching the solution of the question for decision in the present appeal, by propounding one test to which the Royal Naval House should answer, may be estimated by a consideration of the following passage from the judgment of Lord Warrington of Clyffe in the case of the *Girls’ Public Day School Trust v. Ereaut* (1). His Lordship said:—“The Act” (*Income Tax Act* 1918, 8 & 9 Geo. V. c. 40) “contains no definition of ‘public school,’ and it is therefore the function of the tribunal in each case to say whether the school in question is properly so described. In arriving at a conclusion there are obviously many elements to be taken into consideration, and to say that, whatever the other circumstances may be, the existence or non-existence of one element affords an irrefutable test is open to the objection that by doing so the tribunal *pro tanto* binds itself by a definition which the statute does not contain.” The Royal Naval House has, in my opinion, characteristics which entitle it to be described as “public” (*Shaw v. Halifax Corporation* (2); *Girls’ Public Day School Trust v. Ereaut*). Judicial authority however affords no such clear guidance as to what the expression “public benevolent institution” signifies.

Some instances may be given of the use of the word “benevolent” in the statutes of this and other States of the Commonwealth as an adjective qualifying the words “institution,” “society” and “asylum.” In *McLaughlin v. Council of the Municipality of Randwick* (3) Campbell J. decided that an institution known as “Our Lady’s Home” was a “public benevolent institution” within the meaning of sec. 132 (1) (d) of the *Local Government Act* of New South Wales, No. 41 of 1919. The special case upon which his Honor gave his decision stated:—“The institution known as ‘Our Lady’s Home’ is an establishment for nurses” who “went out and nursed the sick poor in their own homes. It is a home for nurses to live in and is supported by voluntary

H. C. OF A.
1931.

PERPETUAL
TRUSTEE
CO. LTD.
v.
FEDERAL
COMMISSIONER OF
TAXATION.

McTiernan J.

(1) (1931) A.C. 12, at p. 27.

(2) (1915) 2 K.B. 170.

(3) (1926) 43 N.S.W.W.N. 165.

H. C. OF A.
1931.

PERPETUAL
TRUSTEE
CO. LTD.

v.
FEDERAL
COMMIS-
SIONER OF
TAXATION.

McTiernan J.

contributions from the general public. The nurses live permanently and free on the premises, and get board and lodging and are clothed by the institution but receive no remuneration. The institution does not receive money from patients and does not minister to those who can pay. The nurses are obliged to be Roman Catholics but do not take any religious vows. Members of all religions are treated." His Honor said (1):—"I think the association, voluntary as it is, with its declared objects and its actual operations, is a public benevolent institution, and the only question seriously argued before me was whether the purposes of the institution could be said to extend to and include the occupation of the subject property by the members, primarily as a headquarters and residence. I think they can." His Honor held that the housing of the establishment was a vital part of the purpose of the institution, and for that reason decided in its favour. The preamble of the *Benevolent Society of New South Wales Act 1902*, which is "an Act to incorporate and otherwise promote the objects of the Benevolent Society of New South Wales," has the following recital, *inter alia*, namely, "Whereas a society was in the year one thousand eight hundred and nineteen established, known as the Benevolent Society of New South Wales, having for its object the relieving of poor, aged, and distressed persons and others requiring such aid: " Sec. 5 of the *Child Welfare Act 1923* of New South Wales contains the following definition: "'Asylum' includes the Benevolent Asylum, every asylum for destitute children, or industrial asylum, and every charitable institution supported wholly or in part by grants from the Consolidated Revenue." The *Adoption of Children Act 1925* of South Australia (sec. 15 (1)) is in these terms: "Upon the application in writing of the manager for the time being of any benevolent or other institution, established in connection with any religious denomination, who is desirous of adopting any deserted child in connection with such institution, any Court on being satisfied—(a) that such child is deserted; (b) that such child is of the same religious denomination as that of the institution whose manager makes the application, and (c) that such institution is properly conducted, and is capable of properly bringing up such child, may

make an order authorizing the manager for the time being of such institution to adopt such child in connection with such institution, such child retaining his or her own name, and in no manner inheriting or succeeding to any property, real or personal, or otherwise howsoever, of such manager or institution." Another instance is sec. 3 of the *Hospitals and Charities Act* 1928 of Victoria: "'Benevolent Society' means any society or association of persons the funds of which are obtained in whole or in part by voluntary contributions and which has as its object or among its objects the affording of charitable relief to diseased infirm incurable poor or destitute persons (including children) and is not exempted from the operation of this Act; but does not include—(a) any 'institution' within the meaning of this Act; (b) any such society or association whose funds are wholly obtained from collections made at religious services; or (c) any association of two or more persons acting together temporarily for any specific charitable object." The *Hospitals and Charities Act* 1928 of Victoria, sec. 67 (1), provides under the heading "Philanthropic Societies or Associations" that "any society or association of persons formed or to be formed having for its object the saving of human life, the promotion of health temperance or morality, the prevention of cruelty or vice, or other cognate objects of a philanthropic or humane nature, shall subject to the requirements as to voluntary contributors contained in Division one of this Part as to institutions capable of incorporation thereunder be and be deemed to be an institution capable of incorporation under this Part and may be incorporated accordingly." Sec. 8 (4) of the *Friendly Societies Act* of Queensland, 58 Vict. No. 17, provides that societies for any "benevolent or charitable purposes," therein called "benevolent societies," may be registered under that Act. The word "benevolent" or "benevolence" appears in the following statements, which have been culled from the decisions. In the *Commissioners for Special Purposes of Income Tax v. Pemsel* (1) Lord *Watson* said:—"I have been unable to find that the word 'charitable,' taken by itself, has any well-defined popular meaning in Scotland or elsewhere. It is a relative term, and takes its colour from the specific objects to which it is applied. Whilst it

H. C. OF A.
1931.

PERPETUAL
TRUSTEE
CO. LTD.
v.
FEDERAL
COMMISSIONER OF
TAXATION.

McTiernan J.

(1) (1891) A.C. 531, at p. 558.

H. C. OF A.
1931.

PERPETUAL
TRUSTEE
CO. LTD.
v.
FEDERAL
COMMISSIONER OF
TAXATION.

McTiernan J.

is applicable to acts and objects of a purely eleemosynary character, it may with equal propriety be used to designate acts and purposes which do not exclusively concern the poor, but are dictated by a spirit of charity or benevolence." In *Attorney-General for New South Wales v. Adams* (1) *Higgins J.* said: "But gifts to assist people who are not poor are not charitable, though they may well be benevolent or philanthropic." His Honor was explaining the technical meaning of the word "charitable." At p. 131 his Honor said: "Again, a club for ex-militia officers, merely because they have been militia officers, and irrespective of their wealth and poverty, could hardly be called a charitable institution, though it may be benevolent."

Mr. *Jordan* has submitted that the meaning of the expression "public benevolent institution" should not be construed by piecing together the respective meanings of the three words of which it is composed. That submission is, I think, a sound one. It should be noted, however, that the dictionaries do not strictly confine the meaning of "benevolent" or "benevolence" within the area of purely eleemosynary acts. In the *Oxford Dictionary*, "benevolent" is said to mean: "desirous of the good of others, of a kindly disposition, charitable, generous." In the same dictionary "benevolence" is said to mean:—"1. Disposition to do good, desire to promote the happiness of others, kindness, generosity, charitable feeling (as a general state or disposition towards mankind at large). 2. Favourable feeling or disposition, as an emotion manifested towards another; affection; goodwill (towards a particular purpose or on a particular occasion). 3. An expression of goodwill, an act of kindness; a gift or grant of money; a contribution for the support of the poor." Indeed, the signification of the word "benevolent" has been said to be influenced by the substantive to which it is attached. "But, even upon this assumption, the appellant's difficulties are not removed, for this reasoning would not endow the word 'benevolent' with the same signification, when it is—as it must be in the present will—attached to the word 'objects,' and their Lordships cannot accept the appellant's argument that if benevolent institutions and benevolent associations in New Zealand are properly regarded as charitable this involves the

conclusion that benevolent objects, where the adjective has no such local limitation of meaning, are necessarily charitable also ” (*Attorney-General for New Zealand v. Brown* (1)).

It does not appear to me that there is any “ common understanding ” (*Girls’ Public Day School Trust v. Ercaut* (2)) of which the Legislature must be taken to have had cognizance that an institution would not be properly described as a “ public benevolent institution ” unless its object was to minister to the poor and needy members of society. There appears to me to be much force in the submission of Mr. *Maughan* that if the expression “ public benevolent institution ” bears the meaning for which respondent’s counsel contends, the concluding words of the sub-section, namely, “ or for the relief of persons in necessitous circumstances in Australia ” are unnecessary. However, it cannot be predicated that the Legislature always intends to use mutually exclusive words in a context such as that contained in the sub-section. (See *Chesterman v. Federal Commissioner of Taxation* (3).)

“ Public benevolent institution ” is, in my opinion, a wider term than “ benevolent asylum.” I do not imagine that it is possible to enumerate all the services which may be rendered by human benevolence operating through the agency of a public benevolent institution. While I do not think that the Legislature intended strictly to confine the exemption to gifts to an institution of a strictly eleemosynary character, yet it may be difficult to bring within the scope of the exemption which has been granted in aid of a public benevolent institution, a gift to an institution which is of a public character, but does not exist for the relief of distress or misfortune occasioned by poverty. But, I am of opinion, that the present case is one in which such a difficulty is disposed of by the facts and circumstances stated in the special case.

It was decided in *Chesterman v. Federal Commissioner of Taxation* (4) that the word “ charitable ” which was in sec. 8 (5) of the *Estate Duty Assessment Act* 1914 must be construed in its technical sense. The last-mentioned sub-section was in these terms : “ Estate duty

H. C. OF A.
1931.
PERPETUAL
TRUSTEE
CO. LTD.
v.
FEDERAL
COMMISSIONER OF
TAXATION.
McTiernan J.

(1) (1917) A.C. at pp. 397-398. (3) (1926) A.C., at p. 132 ; 37 C.L.R.,
(2) (1931) A.C., at p. 28. at p. 320.
(4) (1926) A.C. 128 ; 37 C.L.R. 317.

H. C. OF A.
1931.

PERPETUAL
TRUSTEE
CO. LTD.

v.
FEDERAL
COMMISSIONER OF
TAXATION.

McTiernan J.

shall not be assessed or payable upon so much of the estate as is devised or bequeathed or passes by gift *inter vivos* or settlement for religious, scientific, charitable or public educational purposes." Subsequently the Parliament repealed that sub-section and enacted sec. 8 (5) of the *Estate Duty Assessment Act* 1914-1928. A comparison of the two sub-sections appears to show that the Legislature intended to exclude from the benefit of the exemptions granted by the Act a number of gifts which, though good charitable gifts in the technical sense, were not for religious or scientific or for public educational purposes or were not made upon the principle of giving direct relief or assistance to mankind in sickness or in need.

The men for whose care and assistance the Royal Naval House is established have as a class peculiar needs and disabilities, which arise from the circumstances of their calling. By affording accommodation, protection and comfort necessary to provide for those needs, and to avert the consequences of those disabilities, the Royal Naval House is, in my opinion, exercising a function which distinguishes it as a "public benevolent institution." In view of the identity of the class to whose needs it ministers, this institution is perhaps *sui generis*. It has been established to provide for the petty officers and lower ratings of the Royal Navy, and the Royal Australian Navy, and for the petty officers and men, who serve on the public ships of other nations, which visit Sydney from time to time. If this institution were not open to them, these men would be left to their own devices when they came ashore, and they would be exposed to dangers, temptations and impositions, from which this "House" safeguards them. The special case indicates that the institution would not be able to sustain the financial burden of its operations if the land upon which it is built had not been granted to it by the State, and if it did not receive an annual subsidy from the Commonwealth and donations from the public. The fact that it makes a charge for some of the services which it renders does not destroy its character as a "benevolent institution" (*Borough of Leichhardt v. Moran* (1)).

Seamen engaged on merchant ships have been recognized by the Legislature as a class which needs special protection. Thus,

the *Merchant Shipping Act* 1894 contains, *inter alia*, provisions for the protection of seamen from imposition (secs. 212 and 163). Under sec. 214 the Board of Trade or a local authority may make by-laws relating, *inter alia*, to the licensing, inspection and sanitary conditions of seamen's lodging-houses. Lodging-house keepers may be fined for charging a seaman for a longer period than that for which he has resided in the house, or for detaining money or effects in payment (secs. 215, 216). It is also an offence to solicit a seaman to become a lodger, within twenty-four hours of the arrival of the ship at a home port, or to go on board for such purpose without leave when a ship is about to arrive, is arriving or has arrived at the end of her voyage (secs. 217, 218). Division 16 of Part II. of the *Navigation Act*, passed by the Parliament of the Commonwealth, which is entitled "Protection of Seamen" contains provisions, a number of which are similar to those which have been made in the *Merchant Shipping Act* for the protection of seamen, and the Governor-General was empowered by sec. 425 to make regulations, *inter alia*, for the inspection, management and control of seamen's homes.

It is interesting to recall the views of Lord Chancellor *Hardwicke* expressed in *Baldwin and Alder v. Rochford* (1), in which the plaintiffs who were sailors on board the "Prince Frederic" privateer, "which took a great prize called the 'Marquis D'Antin' the cargo whereof was chiefly gold" claimed that a contract with them for the sale of their prize-money be set aside "upon the foot of imposition and public inconvenience." His Lordship said:—"There cannot be a more useful set of men to the public, nor a more unthinking sort of people, than common sailors, who, as soon as ever they get on shore, for the sake of a little immediate pleasure are willing to part with their right to anything in expectation, for a very little in possession; and this is the sense of the Legislature, both from the Stat. 1 Geo. II., and the 20 Geo. II., c. 24, whereby they have taken notice of them as a set of men not fit to take care of themselves, and therefore have taken care of them against themselves. I do not say that every contract with a sailor is void, or ought to be set aside, but every contract with them must be fair. A sailor shall not be held to bail for less than £20, and therefore nobody

H. C. OF A.
1931.

PERPETUAL
TRUSTEE
CO. LTD.

v.
FEDERAL
COMMISSIONER OF
TAXATION.

McTiernan J.

(1) (1748) 1 Wils. K.B. 229, at p. 230; 95 E.R. 589.

H. C. OF A.
1931.

PERPETUAL
TRUSTEE
CO. LTD.
v.
FEDERAL
COMMIS-
SIONER OF
TAXATION.

McTiernan J.

will lend one of them twenty shillings unless he gives his note for £20, which none of them ever refuse, and do it every day in Wapping, which shows what I have before said to be true, that they will do anything for a little ready money to enable them to take their pleasure."

The men who resort to this Royal Naval House are placed in such a position by the circumstances of their calling, that they have a special need of the assistance which this Royal Naval House provides for them; and while it provides that assistance, in my opinion, that part of an estate which is given to it, is entitled to be exempt from estate duty on the ground that the gift is made to an institution of the kind which the Legislature intended to denote by the expression "public benevolent institution."

No argument was addressed to us, on behalf of the appellant, in support of an affirmative answer to the second part of the question contained in the special case. Upon the view I have taken, I do not deem it necessary to answer that part of the question. The first part of the question, that is to say, whether the bequest of one-fourth of the residuary trust funds in the estate to the Royal Naval House, Grosvenor Street, Sydney, is a bequest to a public benevolent institution in Australia, should, in my opinion, be answered in the affirmative.

Question answered: No. Costs of case stated costs in the appeal. Refer this opinion back to the original jurisdiction.

Solicitors for the appellant, *Dibbs, Parker & Parker.*

Solicitor for the respondent, *W. H. Sharwood*, Crown Solicitor for the Commonwealth.

J. B.