THE CY-PRES DOCTRINE. By L. A. Sheridan and V. T. H. Delany. [1959, London: Sweet & Maxwell Ltd. £2-10s. xxxvi + 166 pp. inc. 6 pp. index.]

The English law relating to charities is at the present day one of the more complicated, not to say unpredictable, fields of the law of property, and in the law of charities the cy-pres principle is perhaps the most complicated and unpredictable part. The appearance of the cy-pres principle in all its ramifications and accompanying technicalia throughout the common-law world and the Commonwealth is indeed something for England to answer for. It is, no doubt, comparatively easy to assign reasons for the present Protean form in the chequered history of the doctrine, with the Crown as *parens patriae* (that somewhat elusive father-figure), the Court of Chancery and its successors' vacillations between strict and liberal applications of the principle and the occasional interventions of the Legislature. But to reduce the cy-pres principle to a coherent and more or less rational form is a task of some magnitude.

A reasoned discussion of cy-pres in England and the Commonwealth has long been awaited. In America, there is of course Miss Edith Fisch's book, but this is inevitably limited in its scope. In England, *Tudor* is thirty years old and *Tyssen* nearly forty, which, in relation to a subject so frequently re-interpreted, means that they are completely out-of-date. In addition, the discussion of cy-pres in *Tudor* is unsatisfactory in treatment and (if one may say so with respect) mistaken in many of its conclusions (such as the relation between cy-pres and *Lassence* v. *Tierney*). Finally, although the treatment of cy-pres in the 3rd edition *Halsbury* is infinitely better than in the 2nd, its inevitably telegraphic style often fails to communicate the principles behind the abstract rules there stated.

Accordingly, *Sheridan and Delany is* greatly to be welcomed. This is familiar ground for both authors; Professor Sheridan has previously contributed several articles to learned periodicals on charities in general, and cy-pres in particular, and Dr. Delany is well known for *The Law of Charities in Ireland.* In the circumstances the reader may fairly look for an "exhaustive, single-minded and scientific" treatment of the subject.

The book falls into three parts. Chapters I and II deal with the history of cy-pres, define the terms and map out the field to be covered (including incidentally a brief discussion of the similar principles which formerly applied to the construction of conditions precedent and to testamentary gifts which infringed the rule in *Whitby*

v. *Mitchell).* Chapters III-VII deal with various aspects of the substantive law (developing and amplifying the propositions first set forth in Chapter II), under the heads of General Charitable Gifts, Initial and Supervening Impossibility, Specified Institutions and Surplus. Chapter VIII treats of drafting problems and Chapters IX and X with practice and procedure.

The text throughout treats the English rule as the "basic" rule. Cases in Commonwealth countries (including, this reviewer ought not to have been surprised to see, Malaya) and the United States, illustrative of the basic rule, are cited in footnotes. Where there has been some significant development outside England, by statute or otherwise (e.g. the Charitable Trusts Act, 1957, in New Zealand) this is discussed in the appropriate place in the text.

The treatment is throughout careful and exhaustive, including the systematic analysis of individual cases or lines of authority where circumstances demand it. There are, of course, places where the reviewer hesitates, but on such a topic differences of view are to be expected rather than otherwise. Thus, for example, this reviewer prefers the principle, relating to institutions lapsing after the testator's death, in the form expressed by Kay L.J. in *Re Slevin* and followed by Sargant J. in *Re Peel's Release*, rather than that of Upjohn J. in *Re Cooper's Trusts* adopted by the authors. But, as they say, no whiff of principle appears to affect the choice (pp. 112-114). On the other hand, there was complete agreement over the substantive rules relating to the application of assets in cases of subsequent impossibility (i.e. regarding the *ratio decidendi* in *Re Welsh Hospital Fund* and its successor *Re North Devon Relief Fund Trusts* as incorrect) and the parallel case of subsequent failure of a specified institution (pp. 122-127).

Again, since a general charitable intention is regarded by so many judges and others as being fundamental to cy-pres, the section on this topic might well have been more fully written up at pp. 33-36 and initial consideration there given to application of this matter in relation to the various specific cases (e.g. as on pp. 77-79, 122-127). After all, the meaning of the term should remain constant. Incidentally consideration might have been given to the American view (e.g. in *Scott*, s. 399.2, p. 2832) that the "general charitable intention" is a mere legal fiction, an *ex post facto* rationalisation of earlier cases. Such a more extensive treatment would not have thrown the book out of balance since there is already a fair degree of repetition in the existing three-layer treatment ((1) preliminary definition (pp. 3-5); (2) elaboration and further definition (pp. 29-44); (3) specific cases (chapters III-VII)).

Mention of repetition draws attention also to the treatment of the American material, which sometimes appears inserted, as it were, as an afterthought — e.g. the passages on the American suspicion of cy-pres as a prerogative emanation, on pp. 18-19, 24-25 and 67. There are also two oddly overlapping footnotes (nn. 49 and 50) juxtaposed on p. 126.

Finally, it should be said that, despite the eminent composition of the Judicial Committee in *Wallis* v. *Solicitor-General (N.Z.)*, the decision in that case does not command general approval in New Zealand. (See N.Z. Privy Council Cases at p. 730.)

Generally, however, the disagreements with the authors are small matters, either relating to the arrangement of their material or depending on the interpretation of conflicting authority. In relation to this indeed, it is of the utmost value to a person asked to advise on a cy-pres problem to have such considered opinions upon which to rely. The style is easy — perhaps even colloquial — but in such a study, lucidity is the first consideration and there is no merit these days in excessive severity of presentation.

The authors have done the legal professions and the law schools alike a real service in *The Cy-pres Doctrine.*

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