HANBURY AND MAUDSLEY MODERN EQUITY. By R.H. MAUDSLEY. Tenth Edition. [London: Stevens. 1976. xc+705 pages. Cased £13.00, Limp £9.00]

Since 1969, when the last edition of *Hanbury's Modern Equity* was published, significant social and economic changes have been brought about — not least by factors such as inflation and consequent wealth consciousness. Repercussions on the law of Equity, both good and bad (depending on one's political inclinations) were clearly inevitable. The legislature embarked on an ambitious and radical tax programme, the underlying basis being that "[t]axation is promoted, at the present time, not only as a revenue raiser, but also as a social and political weapon to effect the equalisation of wealth in society" (p. 235). Meanwhile, the "least dangerous branch", namely, the Judiciary took on themselves the task of re-examining even basic concepts in areas which, hitherto, were thought to have been well settled. *Re Denley's Trust Deed* [1969] 1 Ch. 373, arguably, heralded the way of judicial flexibility. This was confirmed by the House of Lords decision in *McPhail* v. *Doulton* [1971] A.C. 424. Other cases which would tend to support this trend are *Hussey* v. *Palmer* [1972] 1 W.L.R. 1286, *Re Recher's W.T.* [1972] Ch. 526, *Re Vandervell's Trusts (No. 2)* [1974] Ch. 269, and lately (unfortunately too late for inclusion into the tenth edition), *Re Lipinski's W.T.* [1977] 1 All E.R. 33. An occasional counter-current may be detected, e.g., *Cowcher* v. *Cowcher* [1972] 1 W.L.R. 425. Thus, at such a time of legislative and judicial activism (if not dynamism), the tenth edition of *Hanbury's Modern Equity* (now re-named *Hanbury and Maudsley Modern Equity)* is especially welcome. Professor Maudsley should have the reader's gratitude (and, perhaps, sympathy) as he has to describe and analyse modern equity in the authoritative manner which had characterised the previous editions.

Obviously, much re-writing and reorganisation have been necessitated but the only new chapter is that on Taxation and Trusts (Chapter 11). In contrast, the chapters on Administration of Estates, Restrictive Covenants, Mortgages have been removed as they have been found to be "less used in the 9th edition than other chapters" (p. v, *Preface)* and "a proper treatment of retained topics required the exclusion of others" (p. v, *Preface).* As regards the chapter on Taxation and Trusts, its presence may be explained by the practical importance of the subject-matter, its complexity, and its topicality. However, it is submitted that the utility of the chapter in its present form may be doubted. This is because it is very much a matter of straightforward accounts of various tax statutes. Perhaps the theme referred to in the *Preface,* namely, the effect of tax legislation on the *practice* of trusts, could be further developed. As it is, the rather dry accounts (with few exceptions) would be uninteresting to the Equity student and insufficient for the tax student. A rather strong and, perhaps, uncharacteristic passage in the chapter may be mentioned:

> "Few people claim that the system is rational or fair or efficient. Indeed it is a strange phenomenon that the highest rates of tax are those on income. The harder you work for your money, the more tax you pay on it; and if you save what you earn and invest it, you pay higher rates still.... If you work harder, or do another job as well, you therefore pay higher rates on the extra money earned. If you have capital and invest it successfully — which requires some efforts — not so much as working for it, but some — you pay a lower rate of tax on the capital

> gains. If you get your capital from someone else, you need pay no tax on it until you die, or, since 1974, give it away. The system is the converse of reason." (p. 235)

Legislators, take note !

It is worth re-emphasising that in this edition, one can find not only emphatic comments such as the one cited above, but also extremely constructive ones. A chapter especially indicative of this is the one on Licences (Chapter 31) where the implications of cases such as *Winter Garden Theatre (London) Ltd.* v. *Millennium Productions Ltd.* [1948] A.C. 173, and *Bannister* v. *Bannister* [1948] 2 All E.R. 133 and *Binions* v. *Evans* [1972] Ch. 359 are all thoroughly discussed. One can hardly disagree that "the constructive trust solution is at once too vague and too severe" (p. 660) and that the "proper way to protect a licensee... is to apply the principles of the *Winter Garden* case; and to determine the question of the protection of the licensee... on the basis of the court's jurisdiction to issue an injunction in the circumstances of the particular licence in question" (p. 661).

No less emphatic and constructive is the treatment given to the problems created by *McPhail* v. *Doulton* [1971] A.C. 424 and the line of cases following it *(Re Baden's Deed Trusts (No. 2)* [1973] Ch. 9, *Blausten* v. *I.R.C.* [1972] Ch. 256, *Re Manisty's Settlement* [1974] Ch. 17). The problems with the test of conceptual certainty are succinctly explained (pp. 171-2) whilst the comment is made that is regards the situation where a description of beneficiaries is both conceptually certain (a necessary condition) and evidentially certain but which is nevertheless "so hopelessly wide... so that the trust is administratively unworkable...", the answer may lie in the test of capriciousness as developed by Templeman J. in *Re Manisty's Settlement* [1974] Ch. 17, at p. 27 (a case on powers). What is hardly discussed, however, is the fate of the *Broadway Cottages Trust* test for the certainty of objects in trusts The answer seems to be implied at pp. 167-8 that it still holds good for "fixed trusts"; the *dicta, e.g.* by Lord Wilberforce in *McPhail* v. *Doulton* [1971] A.C. 424 at p. 446) suggesting that the *Broadway Cottages Trust* case is no longer good law seems unwarranted in the case of fixed trusts, and if true, would certainly leave a lacuna in this area of the law.

On occasions, however, it may be possible to discern a slight reluctance to accept the judicial shift in equity reasoning (from a "proprietary interest" analysis to a "trustee obligation" analysis). For instance, one of the results of such a shift must be that the strict dichotomy between a trust for persons and a trust for purposes would be less important. Is it right that *Re Denley's Trust Deed (supra)* or *Re Abbott Fund* [1900] 2 Ch. 326, *Re Gillingham Bus Disaster Fund* [1958] Ch. 300 can only be considered either as "trusts for persons" or as "trusts for purposes" (p. 347-8)? Is not the proposition of law that "a trust for purposes would be valid provided it benefits humans directly or indirectly" deducible for these cases? Admittedly, a problem remains of having to reconcile them with cases such as *Morice* v. *Bishop of Durham* (1804) 9 Ves. Jr. 399, and *Leahy* v. *Att.-Gen. for N.S.W.* [1959] A.C. 457. Professor Maudsley later on concludes that the real issue is "whether, as a matter of policy, purpose trusts ought to be enforceable". Though *McPhail* v. *Doulton* seems to have indicated a judicial willingness to be flexible, governed by the important

principle of giving effect to the real intentions of the settlor, it may be too early yet to expect the judges to adopt a line of reasoning based solely on *policy*: this is rather unfortunate. It is perhaps more secure at this time for draftsmen and legal advisers to follow the sensible alternative solutions (pp. 362-364) of effecting a non-charitable purpose. Unfortunately, it cannot be in terms of a private trust, according to the "solutions" given. The principles in *Re Denley (supra)* must be given time to assert themselves. This seems to be happening, for instance, in *Re Lipinski's W.T.* [1977] 1 All E.R. 33, at pp. 43-44, where the *Denley* principle has been extended to cover gifts to the association for a purpose within the association's powers. Oliver J. said, "Thus, it seems to me that whether one treats the gift as a "purpose" trust or as an absolute gift with a superadded direction or... as a gift where the trustees and the beneficiaries are the same persons, all roads lead to the same conclusion." ([1977] 1 All E.R. at p. 46). The new "flexibility" is certainly welcome. As Harman L.J. in *Re Endacott* [1960] Ch. 232 at pp. 250-251, would probably have put it, this is one more occasion "when Homer has nodded".

Though the more important recent cases are undoubtedly well-discussed, it is submitted that insufficient attention was paid to the *case* of *Re Sick and Funeral Society of St. John's Sunday School* [1973] Ch. 51 in which Megarry J. (as he then was) reviewed the state of the law on the problems concerning the distribution of property belonging to mutual benefit societies at their dissolution. The impropriety of the device of resulting trust in such cases was emphasised, as contrasted with the much more suitable influence of a common law approach based on contract.

Further, the implications of Russell L.J.'s judgement, in *Incorporated Council of Law Reporting* v. *Att.-Gen.* [1972] Ch. 73 concerning the fourth head of Lord MacNaghten's classification, perhaps ought to have been elaborated: is it possible to reconcile his approach with the House of Lords decision (based, as it were, on the "analogy approach) in *Scottish Burial Reform and Cremation Society* v. *Glasgow Corporation* [1968] A.C. 138? Is it correct to say that "Russell L.J. went so far as to say that the courts are accepting that if a purpose is beneficial to the community, it is *prima facie* charitable in law" (p. 388)? Is this an implication to be drawn from Russell L.J.'s adopting a test of "whether there are any grounds for holding [the object] to be outside the equity of the statute"? Reading Russell's L.J. judgment, it would seem that he (as well as the other judges) felt extremely uncomfortable when what he had to deal with was really a matter of fact disguised as an issue of law. In the ultimate analysis, it all boiled down to the fact that he "cannot accept that the provision, in order to facilitate the proper administration of the law, of the walls and other physical facilities of a court house is a charitable purpose but that the dissemination by accurate and selective reporting of knowledge of a most important part of the law to be there administered is not." ([1972] Ch. 73, at p. 89).

It may perhaps be added that in dealing with the duties of trustees, hardly any attention is given to that aspect of their duties in connection with the distribution of trust property to beneficiaries (who are *sui juris* and absolutely entitled to a portion of the property). Can such a beneficiary require the transfer of a share to him? Cases such

as *Re Marshall* [1914] 1 Ch. 192, *Re Sandeman's W.T.* [1937] 1 All E.R. 368, *Re. Werner's W.T.* [1956] 2 All E.R. 482 and *Re Horsnaill* [1909] 1 Ch. 631 deserve a mention in this context. Finally, it is interesting to note an uncharacteristic slip when a resulting trust is described as "a situation...." (p. 253).

The expected number of typographical errors can no doubt be found, though to list them all out would be tedious, if not absurd. One particular error, perhaps, can be mentioned: J.W. Harris's article on "Trust, Power and Duty" in (1971) 87 L.Q.R. 31 is variously found (also!) in (1972) 87 L.Q.R. 31 (at p. 348) and (1972) 89 L.Q.R. 31 (at p. 356). Members of the staff of "Bodley's Library at Oxford" (p. vi., *Preface)* may also take note that thanks are due to them, wherever they may be working.

Hanbury's Modern Equity in previous editions was extremely popular and reliable. There is no doubt that in the hands of its new editor, it will continue to be so. The careful blend between theory and practice provides a reader with an eminently readable book filled with interesting academic and practical insights. It is difficult to think of a better reason to buy a legal textbook; *Hanbury and Maudsley Modern Equity* makes Equity and Trusts a lively subject indeed.

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