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Charity law: cats or monks?

The decision of the House of Lords in *Gilmour v Coats and others* (reported in *The Times* of 9 April 1949) makes sad reading in a Christian country especially when compared with the recent case of *In re Moss*, where Romer J held that a bequest to a single lady 'for her to use at her discretion for her work for the welfare of cats and kittens needing care and attention' was a valid charitable bequest. In the course of his judgment the learned judge said-

'...one has to see whether the present case passes the test whether the gift produces some benefit to mankind. In my judgment it passes that test with honours. It seems to me that the care of and consideration for animals which, through old age or sickness or otherwise, are unable to care for themselves are manifestations of the finer side of human nature and gifts in furtherance of those objects are calculated to develop that side and are, therefore, calculated to benefit mankind.'

Yet in holding that the functions of a Carmelite priory are not 'charitable', Lord Simonds is reported as saying: 'With regard to the alleged elements of public benefit, edification by example, he thought that that was something too vague and intangible to satisfy the prescribed test'.

Thus it appears that in the eyes of the law the example of one person looking after cats is edifying, while that of an Order dedicated to 'perpetual poverty, chastity and obedience' is not. Furthermore, this Order enjoins continual prayer for the salvation of mankind - which was held not to satisfy the particular test of benefit to the community. Does then a House which begins its sittings with prayer refuse to recognise the power of prayer - a power which is fundamental in all Christian belief? It was once thought that Christianity was part of the law of England. Since the great case of *Bowman v Secular Society* [1917] A.C. 406 such a belief is no longer tenable, but this does not mean that the law must discount Christian doctrine altogether. No doubt these two decisions were arrived at through following distinct lines of authority, but the resulting paradox should not pass unobserved.¹

¹ *The Times*, 19 April 1949.