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Animal Defence and Anti-Vivisection Society v Commissioners of Inland Revenue(1) (1950-1952) 32 TC 55

No. 1455–HIGH COURT OF JUSTICE–

30TH OCTOBER AND 1ST AND 2ND NOVEMBER, 1950

Income Tax – Exemption – Charitable purposes – Income Tax Act, 1918 (8 & 9 Geo. V. c. 40), Section 37.

The Appellant Society was an unincorporated body governed by rules, under which its object was stated to be ‘the promotion of justice to "animals and the suppression of all cruelty’. The rules also provided that the Society ‘shall oppose vivisection and all experiments on animals “calculated to cause pain” (definition of Cruelty to Animals Act of 1876) by "exposing the suffering inflicted and the failure to bring benefit to humanity. "Further, the Society shall give effective publicity to the constructive aspect "of the opposition to vivisection, to methods of research and healing "dissociated from experiments on animals, support medical freedom and "the Science of Health, thereby demonstrating the fact that the welfare of "humanity and that of animals are inter-related’

On appeal to the Special Commissioners against the refusal by the Commissioners of Inland Revenue of the Society’s claim under Section 37, Income Tax Act, 1918, to exemption from Income Tax on income from investments, etc., medical and other witnesses for the Society gave evidence explaining their objections to research by vivisection; the Crown adduced no evidence in support of such research but placed reliance upon the medical evidence for the Crown in the case of Commissioners of Inland Revenue v. National Anti-Vivisection Society, 28 T.C. 311 (/cch_uk/btc/28-tc-311). The Society contended that, as its objects and methods differed from those of the National Anti-Vivisection Society, the decision of the House of Lords in that case was not applicable; alternatively, that in the absence of unanimity of medical opinion in favour of vivisection there was, on the medical evidence adduced by the Society, a strong case against the conclusions drawn from the evidence in that case. For the Crown it was contended, inter alia, that one of the Society’s main

objects was opposition to vivisection and that accordingly, on the authority of the decision in Commissioners of Inland Revenue v. National Anti-Vivisection Society, the Society was not established for charitable purposes only. The Commissioners accepted this contention and dismissed the appeal. The Society demanded a Case.

Held, that the Special Commissioners' decision was correct.

CASE

Stated under the Income Tax Act, 1918, Section 149, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the King's Bench Division of the High Court of Justice. p. 56 →

1. At meetings of the Commissioners for the Special Purposes of the Income Tax Acts held on 23rd and 25th November and 22nd December 1948, The Animal Defence and Anti-Vivisection Society (hereinafter called 'the Society') appealed against the refusal of the Commissioners of Inland Revenue to admit a claim to exemption from Income Tax by the Society for the year 1942-43, under the provisions of Section 37 of the Income Tax Act, 1918, and Section 19 (1), Finance Act, 1925, in respect of dividends, interest and other annual payments, on the grounds that it was a body of persons established for charitable purposes only.

2. At the hearing of the said appeal evidence was given on behalf of the Society by Dr. Fergie Woods, M.D., M.R.C.S., L.R.C.P.; Dr. Cyril Pink, M.R.C.S., L.R.C.P.; Dr. Beddow Bayly, M.R.C.S., L.R.C.P.; Mr. Holliday-Pott, M.R.C.V.S.; Dr. Bertram Allinson, M.R.C.S., L.R.C.P.; Nina, Duchess of Hamilton and Brandon, chairman of the Society; Miss Nancy Price, vice-president of the Society; the Earl of Selkirk, O.B.E., A.F.C., M.A. Oxon., LL.B. Edinburgh, vice-president of the Society and the Rev. Lionel S. Lewis, vicar of Glastonbury and vice-president of the Society.

During the course of the hearing the following documents were put in evidence, viz.: (1)

We were also referred to the medical evidence give in the case of *National Anti-Vivisection Society v. Commissioners of Inland Revenue*, 28 T.C. 311 (/cch_uk/btc/28-tc-311).

- (i) The Society was founded in the year 1906 as a voluntary society by Miss Lind Af Hageby, who held the office of president at the time of the hearing of this appeal.
- (ii) The constitution of the Society is governed by its rules (Exhibit 1) (2) and under rule 5, consists of a president, vice-presidents, executive council (including chairman and hon. treasurer), life members, hon. members, members and associates. Under rule 6 honorary members are defined as those elected to the Society by the executive council in recognition of personal services rendered to the objects of the Society. A donation of £5 to the Society constitutes life membership. An annual subscription of ten shillings constitutes membership and an annual subscription of 2s. 6d. constitutes associate membership.
- (iii) Under rule 10 'the Executive Council shall control the business "and shall have right of decision over the property and funds of the "Society.' This executive council is, under rule 7, elected at an annual meeting of members and associates of the Society, and consists of not less than nine and not more

than 17 members of the Society.

- (iv) Under rule 12 the executive council elects its chairman from among its members, and the said executive council has power under rule 13 to add to its members and 'may elect Vice-Presidents, Hon. Members, "Hon. Corresponding Members and officials including (under rule 5) a "General Secretary and Assistant Secretaries'.
- (v) Under rule 16 branches of the Society must identify themselves with the objects and policy of the parent society and 'shall use the name of "the Animal Defence and Anti-Vivisection Society on all publications and "on note paper'. There is provision under rule 19 for societies 'having "the same object' as the Society to become affiliated to the Society on p. 57 → payment of a fee of one guinea, and to send one delegate to the annual meeting with power to vote.
- (vi) Under rule 21 the Society 'shall promote international cooperation "by means of correspondence, exchange of reports and publications, "congresses and personal investigation of the treatment of animals "in different countries, thereby furthering humane education and reform'

4. Under rule 1 'The object of the Society shall be the promotion "of justice to animals and the suppression of all cruelty'.

Rules 2 to 4 are as follows:—

- '2. The Society shall offer practical teaching in regard to the "treatment of animals, humane education and enlightenment by means "of lectures, publications, exhibitions and demonstrations relating to "slaughter reform, transport, stabling, trapping, sports and all forms "of man's use and exploitation of animals.
 - 3. "The Society shall consistently expose and denounce cruelty "wherever practised, maintaining that compassion and justice are the "basic qualities of civilisation.
 - 4. "The Society shall oppose vivisection and all experiments on "animals "calculated to cause pain" (definition of Cruelty to Animals "Act of 1876) by exposing the suffering inflicted and the failure to "bring benefit to humanity. Further, the Society shall give effective "publicity to the constructive aspect of the opposition to vivisection, "to methods of research and healing dissociated from experiments on "animals, support medical freedom and the Science of Health, thereby "demonstrating the fact that the welfare of humanity and that of "animals are inter-related.'
- (1) The Society from the time of its foundation adopted as its motto the words of Queen Victoria 'No civilisation is complete which "does not include the dumb and defenceless of God's creatures within the "sphere of charity and mercy.' It therefore sought by every means to advocate the principle that the course of mercy to animals was not a side issue but a vital part of civilisation and social development. In the opinion of its members the protection of animals was not based on sentimentality or on ill-balanced and one-sided emotions, but on the view that the discouragement of cruelty to animals promotes humane sentiments in man towards his fellow men as well as towards animals. The outlook of the Society is expressed in a declaration which is inscribed in a panel in the entrance hall of the Society's London office and is as follows:—

DECLARATION

Our Faith

Mercy, justice and fellow-feeling as a basis of civilisation.

Our Principle

To dispel ignorance by information and fact. To overcome indifference by creating interest and sympathy. To expose cruelty and remove its causes.

Our Knowledge

The great kinship of all living creatures on this planet. Gathered by the compassionate heart and the enlightened mind fortified by the teachings of the great religions, by the science of All-Life, by literature, art and companionship with animals.

Our Method

To show by picture, model and carefully drawn statement the wrong and the right treatment of animals.

Hence our Exhibitions here in Geneva and elsewhere.

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OUR ARGUMENT

Cruelty can never be useful, it debases the human mind, obstructs progress, cheats the harsh and the greedy of the profits and benefits which they seek. By the laws of spiritual progress human welfare and animal welfare are interrelated and inseparable.

- (2) Much of the Society's work, both educational and practical, had been concerned with relief of animals from suffering and consequently with reform in the methods of slaughter and transport of animals. The Society's chairman, Nina, Duchess of Hamilton and Brandon had been particularly concerned in this branch of its work, which is described in greater detail in paragraph 15 below, summarising the evidence given before us at the hearing of this appeal.
- (3) The Society had also greatly interested itself in the welfare and care of horses and during the first world war it established free veterinary hospitals for horses, under the authority of the French War Office, and made numerous gifts of veterinary material to the French Army.
- (4) The Society has always taken the view that the education of children in the proper treatment and attitude towards animals was an aspect of education in its broadest and most ethical sense. Meetings for children, films and broadcasts especially designed for children and literature for children had been a prominent feature of the Society's work. In this connection the Society's publications, exhibited at 25A to G (1) were designed to educate children in the proper treatment of

pet animals. The Society's specially-built pavilion at the Paris Exhibition of the year 1937, which had an average of 15,000 visitors per week, was awarded the Grand Prix by the jury for its educational value.

- (5) The Society had also interested itself in the proper methods of keeping farm animals, and further details of this work are given below in paragraph 15, dealing with the evidence of the chairman, Nina, Duchess of Hamilton and Brandon.
- (6) During the second world war the Society maintained a first-aid post in London with a veterinary surgeon, nurse, assistants and ambulances for the rescue and treatment of animals injured or made ill in air raids. A sanctuary for animals in Ferne, Dorset, was established in connection with this work at the chairman's residence, further details of which are given in paragraph 15 (i), dealing with her evidence and in paragraph 10, dealing with the evidence of Mr. Holliday-Pott, the Society's veterinary surgeon.
- (7) The Society had also been active in advocating reform in horse slaughter traffic; improved methods of dairy keeping; the abolition of bull-fighting; the suppression of rodeos; improved methods of humane destruction of animals. Evidence on these aspects of the Society's work is given in paragraph 15 summarising the evidence of the Society's chairman.
- (a) The Society, although different by constitution, objects and methods of work from such a society as the National Anti-Vivisection Society, which was established to deal exclusively with one particular type of treatment of animals, had from the time of its foundation included vivisection experiments amongst the usages of animals to which it objected. Consequently it was not contended on its behalf that its anti-vivisection principles and work could be separated from the other activities of the p. 59 → Society. A large number of the Society's publications was concerned with opposition to experiments on living animals, and its members were opposed to vivisection on moral and medical grounds, asserting that such experiments constituted cruelty to animals, (Exhibits 3 and 4) (1) , and were contrary to the highest principles of morality, religion and to progress in the art of healing.
- (b) These views were re-affirmed in a resolution adopted at a meeting of the executive council of the Society on 31st December, 1947, as set out in a pamphlet published by the Society in February, 1948, and entitled *Charity. Morally and Legally considered*. (Exhibit 9) (1) . Paragraph 2 of this resolution as recorded on page 10 of the said pamphlet is as follows:—

'That the objects of the Society, consistent with its title "Animal "Defence" necessitate opposition to every form of cruelty, whether committed "in ignorance, through brutality and in defiance of law, or through "practice of commerce and trade or under the plea and excuse of scientific "interest. That laboratory experiments on animals causing pain, suffering "and prolonged misery cannot be condoned by any consistent society "for the prevention of cruelty and the defence of animals. That the "Society regards all cruelty as an evil which is socially disruptive and "degrading to the perpetrators. Convinced that cruelty can never be really "useful the Society does not accept the varied pleas of utility, or necessity "advanced in extenuation or support of arts and practices which cause "suffering and misery to animals and declares that the welfare of animals "and the welfare of humanity are closely inter-related.'

- (c) In the same pamphlet (at page 1) the following paragraph appears in the address to members and associates.

'The Animal Defence and Anti-Vivisection Society is a Society for "the prevention of cruelty and the extension of justice to animals. Being "consistent it is also an anti-vivisection society. Throughout its existence "(over 40 years) it has been classed as a Charity.'

'There have been many attacks upon anti-vivisection in the past, "open and masked, much misrepresentation and suppression of the truth. "The present grave development of hostility, the new campaign to curtail "activities and to discourage supporters concern all humanitarians, all "who hold morals to be above alleged "utility".'

- (d) The Society's opposition to vivisection was not purely negative. Its members believed and sought by every possible means to lead others to believe (a) that the results achieved from experiments on animals were not beneficial to the community and did not lead to the alleviation of human pain and the prolongation of human life (b) that alternative methods of homoeopathy, osteopathy, light and ray treatment and herbalism produced better results, and involved no such experiments on animals. Evidence on both these aspects of the Society's beliefs and work by four medical men and the chairman and three vice-presidents of the Society is set out in the following paragraphs numbered 7 to 9 and 11 to 15 inclusive.

- (a) Dr. Fergie Woods, M.D. (Brussels), M.R.C.S., L.R.C.P., said that he had been in medical practice for 40 years, ten years as a general practitioner and the remainder as a consultant practitioner.
- (b) He had never used either the results or products of vivisection and objected to experiments on living animals (1) because they involved p. 60 → the wilful infliction of unnecessary pain; (2) because vivisection was misleading, since you could not argue from animals to man, or even from one animal to another; (3) because vivisection could be harmful, as in the case of a batch of insulin which, when tested on a different breed of rat from the usual, produced alarming symptoms in the patients receiving it; (4) because vivisection hindered medical progress by taking the medical mind off clinical approach, viz., it treated by labels and not by patients, and therefore the results obtained by such means were not permanent, and on the whole did harm to the patient instead of good. In short, he believed that the real advancement of hygiene, prevention of disease, the cure of disease were all due to other methods than vivisectional experimentation.
- (c) The alternative methods favoured by him were (1) diet (2) manipulation (3) homoeopathy, in which the basis is the reaction of healthy human beings who volunteer for the purpose of testing definite products.
- (d) Dr. Woods said he had not read the evidence given at the hearing of the case of the *National Anti-Vivisection Society v. Commissioners of Inland Revenue* (28 T.C. 311 (/cch_uk/btc/28-tc-311)). He was however aware that eight doctors of considerable eminence in the medical profession and one veterinary surgeon had given evidence in favour of the Crown at this appeal. This did not in his opinion prove that they were right because all great causes began as minorities before they became majorities. At the present time the majority of doctors were undoubtedly in favour of the employment

of vivisection in furtherance of medical knowledge. In his opinion however that was a mistaken view and the view of the minority was the better one. In that sense he was, as a medical man, a rebel against orthodoxy.

- (e) The witness agreed that the discovery by Sir Frederick Banting and Dr. Best of insulin treatment for patients suffering from diabetes came about chiefly through experiments on dogs, but he did not agree that the chances of life of a diabetic patient had vastly improved as a result of their discovery. He had personally never used insulin in his life. He had treated as many diabetic patients as most practitioners, and had found their average expectation of life to be quite as much as those where insulin was used, without the risk attending such treatment. In this connection he was familiar with the reputation of Dr. Robert Daniel Lawrence, the physician in charge of the Diabetic Clinic at King's College Hospital, but he had never read his standard work on diabetes. He did not agree with Dr. Lawrence's conclusion that the use of insulin had prolonged the expectation of life of diabetic patients, because in his experience as a practitioner there was a better alternative. He was prepared to agree that the great majority of medical practitioners in the country preferred insulin treatment, but in his opinion that was largely because they had not yet come to know of any other treatment. The disadvantages of insulin treatment were from the risk of coma from an overdose, the unpleasantness of constant injections and also the expense. All these risks were unnecessary because in his opinion patients could get on just as well, or even better, without insulin, although once such treatment were started it must be continued, and diet must be much stricter with insulin than without it. At the Royal Homoeopathic Hospital other methods were used in treating diabetes. The patient remained during the whole time in perfectly good health and activity, and sometimes died of something else altogether.
- (f) We accepted Dr. Woods's evidence as the expression of his honest opinion conscientiously held, but were unable to accept that opinion as displacing the evidence given by Dr. Robert Daniel Lawrence, F.R.C.P., in the case of the *National Anti-Vivisection Society v. Commissioners* p. 61 → of *Inland Revenue*, 28 T.C. 311 ([/cch_uk/btc/28-tc-311](https://cch_uk/btc/28-tc-311)), at page 323. Quite apart from Dr. Woods's candid admission that he held a minority view at variance with those held by the majority of medical practitioners we felt bound to take into account his admission that he had not studied the work of Dr. Lawrence, a recognised specialist and authority on the treatment of diabetes. We were of opinion that in his advocacy of the methods of treatment which he preferred he approached any alternative methods with a closed mind and that his conclusion that insulin was not beneficial to diabetic patients was not supported by proofs of superior or equal validity to those adduced by Dr. Lawrence.

8. Dr. Cyril Pink, M.R.C.S., L.R.C.P., gave evidence as follows:–

- (a) He had had three years' practice of medicine in the Middle East and was House Surgeon at St. Thomas Hospital and General Lying-in Hospital, York Road, S.E. He had been a specialist in obstetrics for 28 years at Stonefield Maternity Home, Blackheath, London, which was a pioneer institution to which patients came from all over the country and also from South Africa and New Zealand. He was the author of books on pregnancy and the feeding of children.

- (b) In his opinion there were two schools of medical research: (1) the vivisection school; (2) the clinical school, and in the latter, observations were made on patients and not in laboratories. This latter school sought to find the causes of health and disease in the way of life of the patient.
- (c) (i) As a specialist in obstetrics he was familiar with the use of the drug pituitrin for women in child birth. Pituitrin was an extract of the pituitary gland taken from animals, and the dosage had to be worked out from its effect on animals.
- (ii) It was used in maternity hospitals because it stimulated the uterus as an aid to child-bearing.
- (iii) During 28 years' practice as a specialist he had found the use of this drug unnecessary, as the chief obstacles to successful delivery in women were fear and fatigue, both of which could be eliminated by reorganization within the medical services and the right atmosphere and environment in maternity hospitals.
- (iv) The work he had done on obstetrics had been adopted fairly widely by other practitioners. He agreed that many of those doctors might also use the results of vivisection, and that the orthodox view was that there was room for both schools of thought. He disagreed with this view.
- (d) He agreed that Sir Edward Mellanby was accepted as a leading authority on nutrition, and did not suggest that this gentleman pinned his faith entirely on the results of vivisectional research. He did however agree that the supporters of vivisectional research belong to the dominant school of medical thought.
- (e) We accepted Dr. Pink's evidence as a specialist in obstetrics as the expression of an honest opinion conscientiously held, and in particular that he had found the use of pituitrin unnecessary in the Stonefield Maternity Home. His evidence however, did not convince us that the use of this drug was unnecessary if a birth was taking place in difficult circumstances over which the practitioner had no control, and we did not understand him as denying the evidence given by Dr. Burn in the case of the *National Anti-Vivisection Society v. Commissioners of Inland Revenue*, 28 T.C. 311 (/cch_uk/btc/28-tc-311), at page 326, as to the uses of this drug, obtained from experiments on animals, in the treatment of such difficult cases.

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9. Dr. Beddow Bayly, M.R.C.S., L.R.C.P., gave evidence as follows:—

- (a) He was a vice-president of the Medical Practitioners' Union, but his opinion should not be taken as the opinion of the Union. He was trained at Charing Cross Hospital and qualified in 1911, since when he had spent his life in general practice and had also made an extensive study of medical and scientific literature on the subject of experiments on animals.
- (b) He had published a large number of articles and books on vivisection and in his opinion the suppression of vivisection would not be contrary to the best interests of mankind either from an ethical or material point of view.

- (c) In his opinion the abolition of vivisection would result in medical science turning its attention to other methods of research more in conformity with common sense, logic and the dictates of humanity, and more likely to lead to successful results and the acquisition of knowledge beneficial to the human race. It was erroneous to assume that there was only one possible method of investigating the natural laws of physiology, of health and of disease, and thousands of people who believed, as he did, that vivisection was in conflict with the finest and most highly valued instincts of mankind were confident that their opposition of vivisection was calculated to lead to greater and more lasting benefits than any alleged to have resulted from experiments on animals.
- (d) As a medical student in his teens he had embraced a religious and philosophical conception of man's responsibility to the sub-human kingdom which put the practice of vivisection entirely out of court, and during the 45 years which had passed since, he had given unstinted thought and study to all aspects of medical progress which had intensified his conviction.
- (e) He was of opinion that cruelty was bad for the cruel as well as for the victim and that those who worked for the protection of animals from man were working also for the protection of man against himself. Consequently when cruelty to animals disappeared cruelty to men would disappear with it.
- (f) His studies and observations showed that the claims as to the value of vivisection had been frequently false or ill-founded and misleading. Fashions in medical treatment founded on animal experimentation had often in the course of years been superseded or forgotten, and cures and remedies relegated to the limbo of unrealised promises.
- (g) It was impossible to reproduce in an animal the conditions which led up to diseases in man. All treatment based on such methods of research was bound to prove fallacious in the long run.

This view was shared by many of his medical colleagues and in 1936 he had collaborated with a research chemist, Mr. N.C. Cassal, A.R.C.S., B.Sc., in compiling a reasoned *Survey of the Case against vivisection* which was signed by 42 qualified medical men and four other scientists (Exhibit 3) (1). The conclusions of the signatories to this brochure were summed up (at page 63) 'Great benefits to humanity are claimed for the laboratory, "but after fifty years' systematic vivisection humanity still awaits those "benefits. On the one hand are promises; on the other, no cure or abatement, "but a continued and alarming prevalence of the most dreaded "afflictions which assail mankind." p. 63 →

- (h) There was on the other hand one system of medical treatment practised by an increasing number of doctors which recognised the difference between animals and man, and all the remedies used by them were tested on healthy human volunteers. In this system, the homoeopathic, the human being as a whole and not as a case of a classified specific disease, was the subject of treatment. Few would have the temerity to suggest that this system of treatment was inferior in its results to the more orthodox allopathic methods. It was entirely independent of research by animal experimentations, upon which the latter were founded.
- (i) He had written a book entitled *Cancer—the Failure of Modern Research*, published by the Health Education and Research Council (Exhibit 14) (1). In this book he had expressed the view that, in spite of a large amount of money expended on animal experimentation and the performance (by

1946) of 980,617 experiments on animals, there was nothing to show for the vast expenditure of time, money and animal suffering.

- (j) With regard to insulin as a treatment for diabetes it has been claimed by the editor of the journal *Diabetes* in 1933 'It is a triumph of "modern medicine to have converted a previously fatal disease into a "mere inconvenience'. Nevertheless the published figures of death rate from diabetes showed that since insulin had become the generally prescribed remedy the death rate from this cause had increased from 114 per million in 1923 to 185 per million in 1939, and Joslin, a well-known statistician to a large American insurance company had stated 'It is clear from the "facts that diabetic mortality is increasing all over the civilised world.' It was also his opinion that prolonged insulin treatment resulted in mental deterioration.
- (k) He was the author of a brochure entitled *Inoculation against Typhoid Fever—A criticism of its value and scientific basis*, published by the Society (Exhibit 15) (1) .

His objections to such inoculation were:

- (1) In the absence of proper sanitary conditions the inoculation is ineffective.
 - (2) Sanitation alone would banish typhoid.
 - (3) Where sanitary conditions prevailed, inoculation was unnecessary.
 - (4) Both the inoculated and uninoculated contracted typhoid.
 - (5) The inoculated contracted the disease just as severely as the uninoculated.
 - (6) When people were inoculated during an epidemic provocative typhoid might result and the attacks might be more severe.
 - (7) Inoculation might actually delay the disappearance of typhoid.
 - (8) A vast amount of ill health was caused by inoculation—a contention brought out in a memorandum issued by the Health Education and Research Council in 1940 (Exhibit 16) (1) .
- (l) He was also the author of a book entitled *Spotlights on Vivisection* published by the National Anti-Vivisection Society in 1946 (Exhibit 17) (1) in which he had intended to refute, disease by disease, the statements made in support of vivisection. In this book he had pointed to the errors underlying the figures of mass immunisation of many kinds, diphtheria in particular. These views were expanded for diphtheria in another book he had written, published by the Society, entitled *The p. 64 → 'Schick' Inoculation for Immunisation against Diphtheria* (Exhibit 18A) (1) and in three other pamphlets entitled *Immunisation against Diphtheria*, published by the Society (Exhibit 18B) (1) ; *Diphtheria in Scandinavia*, published by the *Medical World*, (Exhibit 18C) (1) and *Immunisation against Diphtheria in America and Canada*, published by the *Medical World* (Exhibit 18D) (1) . His views on the serum treatment of diphtheria, as put forward in these publications, might be summarised in his own words at page 12 (Exhibit 18A) (1) 'Since its introduction upon the market in 1894 "this serum has been hailed as a triumph of the laboratory, which has "robbed diphtheria of its

terrors. In reality it has proved a disastrous "failure.' He adhered to these views notwithstanding the fact that the policy of immunisation was the policy of the Ministry of Health, and public authorities were bound by law to provide facilities for immunisation.

- (m) He had also challenged the claims made on behalf of the results of vivisectional research in regard to the prevention and treatment of malaria in a book entitled *Malaria, Scourge of the Human Race* (Exhibit 19) (1) .
- (n) He had also written an article, published in the *Medical World* on the use of a vaccine for whooping-cough (Exhibits 20 and 21) (1) and agreed with the opinion expressed by the editor of the *Medical World* in July, 1948, that 'the biggest ramp in modern medicine is the foisting "upon the public with the approval of the Ministry of Health of a whooping-cough "vaccine which is admitted to be completely useless.' The *Medical World* was the official organ of the Medical Practitioners' Union, a Union of some five or six thousand doctors, affiliated to the Trade Union Congress. Although, however, he agreed with the views of the *Medical World* on the uselessness of whooping-cough vaccine, he did not suggest that the majority of the members of the Union agreed with his views as to the failure or undesirability of vivisectional research generally.
- (o) Dr. Bayly said he had studied the evidence given in the case of the *National Anti-Vivisection Society v. Commissioners of Inland Revenue*, (28 T.C. 311 (/cch_uk/btc/28-tc-311)) in favour of vivisectional research. He considered that there was a very strong case to be made against the conclusions drawn in that evidence and that the facts behind that evidence were capable of other interpretation.
- (p) Dr. Bayly said that the religious and philosophical conception to which he had referred (see subparagraph (d) above) was acquired during his student days at Charing Cross Hospital, and was at variance with the teaching at the Charing Cross Medical School. It had then occurred to him very strongly that his teachers might be right and he might be wrong, and in medical research a student was usually less competent to form an opinion than his teachers. He also agreed that a Fellowship of the Royal Society was the highest scientific distinction which could be acquired by a scientist in this country and that men who had attained that distinction were at least as competent to weigh evidence as he was himself. He would admit that he might be wrong in his opinions but not in his ethical convictions. He also agreed that the ability to sift evidence and consider it free from preconceived ideas was the mark of a true scientist but did not agree that a scientist would be hampered if his research was controlled by a religious or philosophical conception. On the contrary he might be enlightened. p. 65 →
- (q) Throughout his career he had been in general practice. He had no laboratory or other research facilities at his disposal other than those open to other general practitioners.

Although he had published books and articles on such widely distinct diseases as diabetes, diphtheria, smallpox, tetanus, malaria, cancer, typhoid, and whooping-cough, he was not the author of any standard medical textbook used in any medical school nor, as far as he was aware, were his views put forward in any accepted medical text-book in use in any medical school. His views were, however, to some extent accepted in the London Homoeopathic Hospital and there was 'a tendency in medical journals "to approximate to a great many of his views'. He agreed that a great many

medical men preserved an open mind and were prepared to take advantage of research along both the allopathic and homoeopathic lines spoken of by Dr. Pink in his evidence (*vide* paragraph 8 (b) above) but in his opinion the former school of medical research in so far as it embraced vivisection was wholly bad and the latter wholly good.

- (r) With regard to the subject of nutrition in relation to the treatment of rickets he interpreted Dr. Pink's evidence (at paragraph 8 (d) above) that Sir Edward Mellanby was accepted as the leading authority, as applicable only to those of the particular school of vivisection. Sir Edward had researched along certain lines at his disposal in the animal kingdom, but he had not necessarily any greater experience of research in dealing with human beings than the witness.
- (s) Dr. Bayly said that in the history of medicine as in most other spheres of knowledge there had always been great opposition to new ideas. In his opinion criticism of accepted ideas and the putting forward of new ideas was healthy and calculated to ensure that truth would emerge. This principle had dominated the Medical Practitioners' Union and that was one reason why he belonged to it. All students of the history of medicine were aware that there were fashions in medicine that come and go. In his opinion laboratory experimentation on animals, which started in a scientific sense with Pasteur in the year 1880, was such a fashion although it had lasted about 70 years.
- (t) We were unable to regard Dr. Bayly as an unbiased witness to scientific truth. In this respect his statement to the effect that, as a young student, he had formed religious and philosophical convictions which ruled out vivisection impressed us unfavourably, and, as to his evidence generally, we did not consider that it was in any respect equal in weight to that given on behalf of the Crown by the eight medical witnesses in the *National Anti-Vivisection* case, 28 T.C. 311 (/cch_uk/btc/28-tc-311), at pages 318 to 327 inclusive.

10. Mr. Holliday-Pott, M.R.C.V.S., said he had been veterinary surgeon of the Society since 1939.

- (a) During the war he had been in charge of the Society's first-aid post in St. James's Place and had directed the work of rescuing animals during air-raids, and of bringing them to the first-aid post. He was assisted by a nurse and lay-assistants with ambulances and the telephone was manned day and night as the organization was constantly on call from the Police, Civil Defence services and from the public.
- (b) The original intention was to serve the City of Westminster but gradually, when the need became apparent, they found it necessary to serve the needs of the whole of London. The Society's work became known to the Police and to air-raid wardens and its ambulance used to visit the worst bombed areas of London. p. 66 →
- (c) The Society had dispersal kennels at its disposal and either kept the animals there or sent them to an animal sanctuary at Ferne in Dorset, the residence of the Society's chairman, Lady Hamilton, where animals were given care and protection under her supervision.
- (d) The organisation gave help and advice. Many people came with animals suffering from shock and fright and were advised whether Ferne could take them. The witness made various visits to the animal sanctuary there and was able to advise Lady Hamilton as to health and prevention of disease

there. The main consideration was to avoid destruction, but if it was impossible to bring the animals back to health they were humanely destroyed.

- (e) No money was asked for by the Society for these services but many people showed their gratitude by sending donations to the Society.

One of his outstanding recollections of the war was the gratitude that people showed for this branch of the Society's work. The ambulance had painted on the side a notice to the effect that it was for animals and wherever it stopped groups of people collected with injured, ill and frightened animals suffering from shock, needing sedatives, anaesthetics, dressings, etc. The ambulance would if possible return to the same place on the next day or on the following week, though the demands of the people of London were so great that it was often impossible to satisfy them all.

- (f) The Society also gave away a great deal of free medicine and when unable to continue treatment, a large number of dressings, lotions, medicines and sedatives for use during air-raids.
- (g) Mr. Holliday-Pott said that in his opinion this emergency work helped the morale of the people. Many people were only sustained through the air-raids by the fact that they had animals to look after. The care of their animals gave them responsibility and made them happier and more courageous.
- (h) Mr. Holliday-Pott said that he still gave free veterinary advice and performed operations on behalf of the Society gratuitously.
- (i) We accepted this witness's evidence and were satisfied that the Society had performed services of very great value both to animals and their owners during the period of enemy air-raids on London. We observed however that he did not comment, and was not asked to comment, on the evidence given by Professor George Henry Wooldridge, F.R.C.V.S., in the *National Anti-Vivisection Society* case, 28 T.C. at pages 326-7 to the effect that all practising veterinary surgeons in this country use local anaesthetics, which were discovered by animal experiments, and that the result of experiments on animals had been to decrease very considerably suffering among animals.
- (a) Dr. Bertram Allinson, M.R.C.S., L.R.C.P., said he was a practising physician on what is popularly termed nature-cure lines, dietetics and natural hydropathic methods.
- (b) For many years he wrote in the *Anti-Vivisection Journal* monthly articles criticising or using the evidence produced by vivisectors in their experiments, and also medical statistics as issued by the Registrar-General. His conclusion was that the claims made were not substantiated either from the ethical or purely scientific point of view. He did not think that prohibition of vivisection experiments, as defined by the Act of 1876, would obstruct medical progress and the advancement of the science of health, because he was of opinion that human ingenuity would certainly devise other methods of investigation and research which would be more fruitful. p. 67 →

Moreover he considered that a very high proportion of vivisectional research was barren, fallacious and misleading.

(c) In his opinion, ill health was to a very high degree the outcome of human misconduct, and unless medical practitioners could teach people why they were ill and how they should live they could never obtain an answer to the problem of disease. Vivisectional research did not supply an answer to that problem in any sense of the word; because it merely sought to deal with 'end' results and made no effort to get at the fundamental causes of disease. In his own practice, Dr. Allinson said he used nature cure methods, diet, fasting, manipulative treatment, massage, light and water treatment, and simple herbal remedies. This seemed to him the right way of dealing with disease and was very successful. He was also of opinion that by such treatment many surgical operations could be avoided, and he had expanded these views in a lecture given under the auspices of the Health Education and Research Council, subsequently published in pamphlet form under the title *Unnecessary Operations* (Exhibit 29) (1) .

(d) He was one hundred per cent. opposed to smallpox vaccination which in his opinion had done more harm to humanity than almost any method of so called prevention. Vaccination had been carried on extensively for the past hundred years, and it had only recently been discovered that there was a danger of vaccination causing encephalitis. Consequently, whereas in the past orthodox doctors had said that vaccination was relatively harmless, they no longer maintained this, with the result that, under the new Health Act, compulsory vaccination had been abolished. As to question of inoculation he had little personal experience. He said he did not believe in preventative inoculation. He thought the case was not proven, and even if proved he thought it an unscientific method of dealing with the problems.

The majority of doctors still recommended vaccination, but specialists like Dr. Killick Millard were opposed to its wholesale use. He thought however that if one was 'one hundred per cent. honest' one must admit possibilities of benefit from vaccination.

(e) Dr. Allinson said it would be ridiculous in his opinion to suggest that vivisectional research had produced no results, but it was the method which he opposed. The results of vivisection, in his opinion, were akin to a man claiming to live by robbery and violence. Such a man might accumulate great wealth, but the real question was how did he make it? So, in the case of vivisection, he did not deny that much information had been gained but the method of gaining it had been incorrect. Moreover many treatments of disease had been produced which had ultimately been found to be injurious or not proven.

(f) His activities were educative as well as therapeutic and he looked forward to a much better organised world in which people would have been educated to the point of leading simpler and more natural lives in which they would not acquire the diseases now treated by vivisectional methods. The immediate problem was however another question. Strictly, a practitioner holding the same views as himself was not justified in disregarding right aims in attempting to relieve pain and suffering. His personal view was that occasionally conditions arose which could not be dealt with by his own orthodox methods, but might involve methods of which he disapproved, for example the use of insulin, liver extract and so forth. He did not feel himself entitled to deny patients those treatments p. 68 → if they wished them but he did not himself prescribe them. In such a case he would say to the patient 'This treatment is being used; if you wish it I will send you to somebody else, but I do not myself believe in it, and I do not therefore practise it.' As a doctor he did not feel entitled to withhold

anything from a patient, but he had patients who had such strong views about vivisection that they would refuse any treatment of that kind even if it cost them their lives. He would not deny that insulin might save a patient's life but he considered its use ethically wrong. Diabetes, in his opinion, was a disease of an over-wrought civilisation. During the first world war the disease practically disappeared in Denmark because of dietetic restrictions. An immense amount of money and time had been spent on orthodox research, whereas research on a similar scale in the school of thought to which he subscribed was practically non-existent. He believed that in time methods of dealing with those conditions would be found, which would be successful and would not have the stigma of an immoral method of treatment.

- (g) Typhoid was an example of a dirt disease which, with a sufficient increase in sanitation, would with others become non-existent. In the meantime it was the orthodox medical view that in an imperfect world in which, particularly in time of war, masses of men had to be moved to places where there was in fact no sanitation, protective inoculation was a benefit. This was the view of the Ministry of Health and the view put forward in medical text books, but in his view it had not been proved statistically. He had not looked at the evidence on this matter given by the eminent medical witnesses for the Crown in the *National Anti-Vivisection* case (28 T.C. 311 (/cch_uk/btc/28-tc-311)), but was prepared to admit that they were at least as qualified as he was to draw conclusions from statistics. He was not however prepared to admit that they had drawn the correct conclusions, because he was certain that a considerable amount of statistics which appeared to support orthodox methods, and which were countenanced by eminent medical men, would not bear statistical investigation. Thus, in his view, all that the typhoid statistics had shown was that under given circumstances typhoid as a diagnostic disease had decreased, but enteric and dysentery had increased. Statistically the 'end' result was the same from the point of view of ill health and loss of life. So, in spite of inoculation, while typhoid might disappear, something else would take its place.
- (h) We were impressed by the fairness and candour of Dr. Allinson's evidence, even though we could not accept it as displacing the orthodox medical view. Thus we could not regard his statements as establishing a case against vivisection in the actual condition of human life and society. We were of the opinion, also, that his admission that the use of insulin, due to research on vivisectional lines, might save somebody's life went to confirm the evidence given on behalf of the Crown in the *National Anti-Vivisection* case, that the abolition of vivisection would not at the present time be a public benefit.

12. The Rev. Lionel S. Lewis, Vicar of Glastonbury and vice-president of the Society, said he had been in Holy Orders for 57 years.

- (a) He had been at one time Vicar of St. Mark's, Whitechapel and had always cared very much for down-trodden humanity and animals.
- (b) When he was a boy of 16, Tennyson's sister had introduced him to the horrors of vivisection. Subsequently his doctor had told him that all animals under experiment were completely anaesthetised, and when he found this was untrue he joined the Society. p. 69 →

- (c) He considered that the dominant motive which inspired anti-vivisectionists was compassion (the core of Christianity) and that their work was for the benefit of character which was the most important thing in education.
- (d) He retained the opinion which he had expressed before the Royal Commission on Vivisection in 1907 and the arguments in favour of vivisection 'left him cold'. On the one side was the most terrible suffering and on the other side only the theory that it was useful.
- (e) In his opinion it was impossible not to include anti-vivisection among the objects of societies for the protection of animals.
- (f) In his opinion articles in praise of vivisection in newspapers would induce young people who had begun their studies but did not feel fitted for the medical profession to take up experiments on animals as a career.
- (g) In his opinion those who favoured vivisectional experiments fell into one of three classes: (1) those who did it reluctantly thinking it was doing good; (2) men like Klein and Pembrey who did not care; (3) those who did it for the lust of cruelty and the cruelty of lust.
- (h) We had no doubt as to the sincerity of this witness's convictions, but we had no hesitation in rejecting his conclusions as to vivisection.

13. George Nigel Douglas Hamilton, Earl of Selkirk, O.B.E., A.F.C., a Scottish representative peer, M.A. (Oxon.), LL.B. (Edinburgh), gave evidence as follows:—

- (a) He commanded 603 Squadron R.A.F. during the years 1934 and 1938; he was a member of Edinburgh Town Council in the years 1935 to 1940 inclusive, and a freeman of Hamilton. He is a vice-president of the Society.
- (b) He could speak with personal knowledge of the excellent work performed by the Society during the second world war in the dispersal of animals rendered homeless as a result of enemy activity over London. No action at all was taken by the authorities in that direction, but it became evident a very short time after the commencement of the war that there would be a large number of animals affected which, but for the Society's action, must have been subjected to considerable suffering and hardship. Moreover a large number of service men in all parts of the country had animals of which, owing to the break-up of their homes, they were unable to dispose, and these animals were cared for by the Society, and returned to their owners whenever possible after the war was over.
- (c) Lord Selkirk said the Society held the view that vivisection, like the torture of human beings or flogging in public, was one of the practices which human nature would cast aside in due course; its teaching was objectionable, it was not a necessary part of human development and it would fall away naturally in due course. An essential feature of the Society's teaching was the unity of creation, in which all human beings formed a part, and involved a moral obligation on mankind. The Society's members believed that health was a positive and not a negative blessing. They were opposed to vivisection not only because in their view it was unnecessary but also because they believed it was

morally wrong. He accepted the statement made in the Society's publication *You and the Animals In Peace In War* (Exhibit 11) at page 3 (1) that 'Animal Defence "or Prevention of Cruelty should, without qualification or reservation, "include opposition to vivisection.' p. 70 →

- (d) In so far as it was concerned with statements of fact we accepted Lord Selkirk's evidence, and in so far as it was an expression of personal opinion, we accepted it as honestly held.

14. Miss Nancy Price gave evidence as follows:—

- (1) She was an actress and hon. director of the People's Theatre. She was also the author of 12 books dealing with nature and animal life, and also published a magazine.
 - (2) She was a vice-president of the Society and an enthusiastic supporter of it, because she thought it active, progressive and courageous, that it forwarded the cause of humanitarianism, was educational, and dispensed its funds wisely.
 - (3) The Society, to her knowledge, had especially concentrated on giving instruction in the treatment of animals, and in her opinion there was an important relation between cruelty to animals and brutality to human beings. She would not be a vice-president unless she believed that the Society did good work for humanity.
 - (4) In her opinion charity meant mercy, kindness and justice to all living creatures without favour, and from that point of view she had no doubt that the work of the Society was charitable.
 - (5) We accepted Miss Price's evidence as the expression of her personal opinion honestly held.
- (a) Nina Mary Benita, Duchess of Hamilton and Brandon, Lady of Grace of the Order of St. John of Jerusalem, and for many years president of the Lanarkshire Red Cross Society said she had supported a number of social welfare activities by speaking and writing and material aid. She was chairman of the Society, had worked in an official capacity for 20 years, and had been interested in its work for a much longer time.
 - (b) She had made an intensive study of the methods employed in this country and abroad in slaughtering animals for human food and had written and spoken on behalf of the Society in the interests of slaughter reform in many of the capitals of Europe and in America.

She had given many lectures on slaughter reform and produced one, delivered at Bristol in 1926, before the State Medicine and Municipal Hygiene Section of the Royal Institute of Public Health Congress (Exhibit 22) (1) . She had worked strenuously on behalf of the Society against the old inhumane methods of slaughter, wrong condition of slaughter-houses, transport, wrong methods of keeping animals, captivity of birds, improvement of cattle markets and the like. She had always maintained that the right treatment of animals in slaughter-houses was in the interests of humanity, and had taught that pain-poisoned meat, viz., the meat of animals who suffered mental and physical pain before death, was a danger to public health. There was in her opinion need for new legislation in slaughter regulations, and in the betterment of slaughter-houses. Also in regard to transport the law needed amendment. At present animals need not be given water oftener than every 24 hours, which was too long a period; they should moreover have precedence over all goods.

- (c) Lady Hamilton said she had also recently initiated a campaign to stop certain features of the horse slaughter traffic. This was desirable from utilitarian point of view as well as the humanitarian for if horse slaughtering continued at its present rate the cart horse would become p. 71 → extinct. At the present time farmers, who needed horses for the land, could not compete against those who bought them for slaughter.
- (d) Lady Hamilton said she had also interested herself in the right treatment of cows by dairy keepers. If cows were kept badly, they could not possibly give healthy milk. The present fashion of keeping cows chained in a set position in stall so that they were treated as machines was objectionable. In the Society's exhibition improved methods of stabling were shown. As a practical farmer for 50 years she was in process of producing model stabling for cows, more in consonance with their natural condition, in which they were less liable to such diseases as 'foot and mouth', and being happier, were more likely to be healthy and to give healthy milk.
- (e) She had also taken an active part in the many special campaigns against bull-fights and in 1927 attended, with the Society's president, an international congress for animal protection in Madrid under the patronage of the Queen of Spain, and witnessed a bull-fight. As a result of their representation to the congress, they were able to secure that in future some very meagre protection by way of padding should be given to the horses used at bull-fights, though this measure was not really very effective.
- (f) When a rodeo came to London she attended it and subsequently wrote to the Press. After the Rodeo the horses were sold, and she took some 30 of them to her estate at Ferne, and was able to show that they were only rendered wild by ropes fixed in a special way, and that when they were properly treated all their supposed wildness disappeared as a result of humane treatment.
- (g) Lady Hamilton was also chiefly responsible for the large section in the Lord Mayor's processions of the years 1929 and 1930, organised by the Society, in which the services of animals to man were demonstrated; and she produced (Exhibit 26) (1) articles on these demonstrations reprinted from *Progress Today*, and published by the Society.
- (h) She had also assisted in directing attention, on behalf of the Society, to the importance of destroying animals humanely where this was necessary. There had been a conference of all animal societies in 1933 at the Central Hall, Westminster, to consider this matter and she produced a pamphlet (Exhibit 27) (1) containing a record of the proceedings at this conference.
- (i) Lady Hamilton said she had also given addresses in churches and to children expressing the view that peace would never come to man until man gave peace to animals, nor would man's inhumanity to man cease until cruelty to animals came to an end. In this connection she had written, and produced in evidence, a number of booklets published by the Society in which the importance of the right attitude of man, and especially of children, to animals was put forward. Chief of these were *Christian Ethics and the Animal Kingdom* (Exhibit 23) (1) ; *The Care of the Dog*; *The Care of the Cat*; *The Care of the Horse*; *The Care of the Donkey*; *Hints on the Care of Rabbits*; (Exhibits 25B to F) (1)

. The Society had given a wide circulation, nearly always free, to these articles and publications. The witness also produced a pamphlet by the Society's president entitled *Teach the Child* (Exhibit 25A)(1)

- (j) Lady Hamilton said she was actively engaged on behalf of the Society during the second world war 1939-1945 in the relief of animal and human suffering. She had appreciated from the beginning that there would be bombing of people and that animals would be homeless; that there would be evacuation and terrible dislocation in the event of air-raids. She therefore arranged with the B.B.C. to give a broadcast offering the services of the Society to people who for some reason could not keep their animals and wanted them put in safety. She then organised their reception in London and at her country estate in Ferne, as a place to which animals were sent which needed care. Ferne was turned into an animal sanctuary and began to receive dogs in batches of 15 to 30 at a time. She was largely instrumental in establishing the Society's first-aid veterinary post and was often in London assisting the Society's veterinary surgeon, Mr. Holliday-Pott, in his day and night service in the cause of mercy to animals and their owners. During the past ten years not less than 6,000 animals had been cared for at the animal sanctuary and some of these stayed for the whole duration of the war and included dogs, cats, horses, rabbits, guinea pigs, a fox and various birds.

A large proportion of the animals reached the sanctuary sick and frightened after the air-raids in London and they sometimes brought with them dog distemper and cat 'flu, both of which were generally deadly, but they had a comparatively small percentage of deaths. No animals were destroyed unless they were beyond human skill. In the treatment of these animals she had the help of 12 assistants, some of them fully trained, but they used no medicine or method at Ferne which they thought had been derived from vivisectional experiment. The treatment used was homoeopathy, herbs, light treatment, etc. but the main requirement for animals was kindness and individual care.

- (k) Lady Hamilton said that she belonged to the Society because she considered it to be the most logical and the most efficient of animal protection societies. The Society's policy was the abolition of every form of cruelty to animals and its methods were educational and not by prosecution of offenders. She was an anti-vivisectionist because she was a Christian and from the practical point of view considered that anti-vivisectional methods were the more effective. In her opinion any society formed for the prevention of cruelty to animals or for their protection and welfare was inconsistent and untrue to its principles if it did not include anti-vivisection among its objects. On the other hand she thought that a society which was only 'anti-vivisection' was inconsistent and feeble if it took no action on cruelties in other directions. She did not mean by that statement that it was wrong for a group of people who were impressed by a certain cruelty, for example in animal slaughter, to form themselves into a society and concentrate on that special object but they should not be against anti-vivisection.
- (l) She had made a special study of rickets and tuberculosis of the joints and had visited a sanatorium in France which treated children suffering from those diseases. The methods employed were sun and light therapy, diet, exercises and herbal treatment. There was above all great kindness. Products resulting from vivisection were never used. This sanatorium was very successful and the French government had awarded its founder the highest honours. She knew that Sir Edward Mellanby was regarded by the majority of the medical profession as the leading authority on the causes and cure

of rickets. She also knew that he had stated, in his evidence in the *National Anti-Vivisection* case (28 T.C. 311 (/cch_uk/btc/28-tc-311) at page 322) that the cause of rickets was a deficiency of vitamin D, and that this could not have been discovered without experiments on animals. She did not agree with this view. Children brought up under natural methods of diet and life had always been free from rickets and the vital life-giving p. 73 → factors needed by children had been known long before Sir Edward Mellanby had made the name 'vitamin' fashionable through his writings. In this opinion however she was speaking not as an authority but as a student of the subject.

- (m) In so far as it contained statements of fact and in particular as to work done on behalf of the Society in promoting kindness to animals and improvement in their care, treatment and humane destruction, we accepted Lady Hamilton's evidence. In so far as it concerned personal opinions and convictions, we accepted them as honestly and conscientiously held.

16. The sole question for our determination was, and for the opinion of the Court is, whether on the evidence stated above in paragraphs 2 to 15 inclusive, the Society is a body of persons established for charitable purposes only within Section 37 of the Income Tax Act, 1918.

17. It was contended on behalf of the Society that:—

- (a) as an organisation for the general and consistent protection of animals it was established for charitable purposes only, because its objects were for the advancement of education, the advancement of religion, and for other purposes beneficial to the community, in so far as the discouragement of cruelty to animals promoted humane sentiments in man towards his fellow men, as well as towards animals and thus involved moral benefit to the community;
- (b) the decision of the House of Lords in the case of *Commissioners of Inland Revenue v. National Anti-Vivisection Society*, 28 T.C. 311 (/cch_uk/btc/28-tc-311), had no application to the Society, because its objects and methods differed from those of the National Anti-Vivisection Society;
- (c) in the alternative, in the absence of any unanimity of medical and scientific opinion in favour of vivisection there was, on the medical evidence adduced in this appeal, a strong case against the conclusions drawn from the medical evidence in the *National Anti-Vivisection* case (*supra*) and no medical evidence in support of vivisection had been adduced in this appeal.

18. It was contended on behalf of the Commissioners of Inland Revenue that:—

- (a) the Society was not established for charitable purposes only because its objects did not come within any of the categories of charitable objects enumerated by Lord Macnaghten in *Special Commissioners of Income Tax v. Pemsel*, 3 T.C. 53 (/cch_uk/btc/3-tc-53), at page 96;
- (b) the Society's objects were of too vague a nature to be applied by the Court and in any case were not for the advancement of education or of religion within the intendment of the Statute of Elizabeth;
- (c) the Society was not established for charitable purposes only on the authority of the *Commissioners of Inland Revenue v. National Anti-Vivisection Society*, 28 T.C. 311 (/cch_uk/btc/28-tc-311), because one of its principal objects was opposition to vivisection;

- (d) the evidence of the Society's medical witnesses did not outweigh the authority of the evidence of the Crown's medical and scientific witnesses in the case referred to in sub-paragraph (c) above as set out in the report in Tax Cases, which admittedly represented the views accepted and acted upon in the highest medical and scientific circles in this country.

19. We, the Commissioners who heard this appeal having taken time to consider the evidence and the arguments adduced before us, gave our decision as follows:— p. 74 →

- (1) In this appeal for the year 1942-43, the Animal Defence and Anti-Vivisection Society (hereinafter called 'the Society') claims exemption from Income Tax under the provisions of Section 37 of the Income Tax Act, 1918, and Section 19 (1) of the Finance Act, 1925, on the grounds that it is a body of persons established for charitable purposes only.
- (2) The Society consists of a president, vice-presidents, executive council, life members, members and associates (rule 5). The executive council, which, under rule 7, is elected at an annual meeting of members and associates of the Society, is empowered under Rule 10 to 'control the "business and shall have right of decision over the property and funds "of the Society'.
- (3) Under rule 1, 'the object of the Society shall be the promotion "of justice to animals and the suppression of all cruelty.'

In our opinion however rules 2 and 4 are either in themselves an expression of objects or are necessary for the interpretation of rule 1 and for the administration of the Society. These rules are as follows:—

'Rule 2. The Society shall offer practical teaching in regard to the "treatment of animals, humane education and enlightenment by means of "lectures, publications, exhibitions and demonstrations relating to slaughter "reform, transport, stabling, trapping, sports and all forms of man's use "and exploitation of animals.

"Rule 3. The Society shall consistently expose and denounce cruelty "wherever practised, maintaining that compassion and justice are the basic "qualities of civilisation.

"Rule 4. The Society shall oppose vivisection and all experiments "on animals "calculated to cause pain" (definition of Cruelty to Animals "Act of 1876) by exposing the suffering inflicted and the failure to bring "benefit to humanity. Further, the Society shall give effective publicity "to the constructive aspect of the opposition to vivisection, to methods "of research and healing dissociated from experiments on animals, support "medical freedom and the Science of Health, thereby demonstrating the "fact that the welfare of humanity and that of animals are inter-related.'

- (4) Since its foundation 42 years ago by Miss Lind Af Hageby, who is now its president, the Society has consistently included vivisection experiments among the usages of animals which it denounces as cruelty. Moreover, in the presentation of the Society's appeal before us, both the president and chairman contended that any Society formed for the general protection of animals that did not include anti-vivisection among its objects was not true to its principles. It is therefore common ground that anti-vivisection is a substantive and important object of the Society.

- (5) It is contended on behalf of the Society that as an organisation for the general protection of animals it is established for charitable purposes only, because its objects are for the advancement of education, the advancement of religion, and for other purposes beneficial to the community, in so far as the discouragement of cruelty to animals promotes humane sentiments in man towards his fellow men, as well as towards animals, and thus involves moral benefit to the community. It is further contended that the decision of the House of Lords in the case of *Commissioners of Inland Revenue v. National Anti-Vivisection Society*, 28 T.C. 311 (/cch_uk/btc/28-tc-311), has no application to the Society because its objects and methods differ from those of the National Anti-Vivisection Society. In the alternative it is said that in the absence of any unanimity of medical and scientific opinion in favour of vivisection there is, on the medical evidence adduced in this appeal, a p. 75 → strong case against the conclusions drawn from the medical evidence in the *National Anti-Vivisection Society's* case (1) .
- (6) For the Crown it is not admitted that the objects of the Society come within the categories of charitable objects enumerated by Lord Macnaghten in *Special Commissioners of Income Tax v. Pemsel*, 3 T.C. 53 (/cch_uk/btc/3-tc-53), at page 96, because there is, it is said, no analogy with any of those set out in the Statute of Elizabeth, and the Society's objects are in any event of too vague a nature to be applied by the Court. But the Crown's main objection to the Society's claim is that opposition to vivisection, so far from being a public benefit, has been held by the House of Lords in the *National Anti-Vivisection Society's* case, to be gravely injurious thereto.
- (7) No medical evidence in favour of research on vivisectional lines was adduced before us by the Crown at the hearing of this appeal. It was however contended that the medical evidence given in the *National Anti-Vivisection Society's* case on behalf of vivisection was so strong and had received such favourable comment in the House of Lords that the Crown was entitled to succeed in this appeal unless the medical evidence on behalf of the Society was at least of equal weight.
- (8) We recognize the sincerity of the medical witnesses called on behalf of the Society in this appeal, but we are unable to accept their evidence as having any such weight. Moreover the medical witnesses in this appeal admitted that the medical evidence given in the said case on behalf of the Crown was in accordance with the views held by a very large majority of the medical profession and that those views were advanced in the standard medical text books used in the teaching hospitals.
- (9) We hold, as the Crown contends, that the Society's claim to exemption fails because one of its principle objects is opposition to vivisection and therefore, on the authority of *Commissioners of Inland Revenue v. National Anti-Vivisection Society*, 28 T.C. 311 (/cch_uk/btc/28-tc-311), it is not a body of persons established for charitable purposes only. In view of this object we express no opinion on the Crown's alternative contentions as set out in paragraph 6 above.

20. The Appellant Society immediately after the determination of the appeal declared to us its dissatisfaction therewith as being erroneous in point of law and in due course required us to state a Case for the opinion of the High Court pursuant to the Income Tax Act, 1918, Section 149, which Case we have stated and do sign accordingly.

A.W. BALDWIN, G.R. HAMILTON Commissioners for the Special Purposes, of the Income Tax Acts.

Turnstile House,
94-99, High Holborn,
London, W.C.1.

The case came before Danckwerts, J., in the High Court on 2nd November, 1950, when judgment was given in favour of the Crown, with costs.

Danckwerts, J.—This is an appeal by an unincorporated body of persons called the Animal Defence and Anti-Vivisection Society which, it appears, was founded about the year 1906.

The appeal is from a decision of the Special Commissioners of Income Tax refusing exemption from Income Tax to the Appellants under the provisions of Section 37 of the Income Tax Act, 1918. In order to secure exemption from Income Tax under those provisions the position shortly is that the Appellant Society must establish that they are a body of persons established for charitable purposes only.

This body of persons has as its constitution, it appears, a set of rules, and the only rules which seem to me to be material really for the purpose of this case are the first four. The rest of the rules, for the most part, deal with matters of administration and machinery. The material matter of course is what is the object or what are the objects of the Society, and those must be found, it appears, in the first four rules, or one or more of those rules.

The first rule of the Society is in these terms: 'The object of the "Society shall be the promotion of justice to animals and the suppression "of all cruelty'. I think it is obvious that the words 'suppression of all "cruelty' must refer and be confined to suppression of all cruelty to animals; the phrase 'the promotion of justice to animals' is a curious one and one which gives rise to a little doubt.

In the course of the argument various suggestions were made as to its meaning by Mr. Upjohn, who appeared for the Commissioners of Inland Revenue, and by myself. It appears that it has a strong resemblance to a phrase used by Holmes, L.J., in the Irish case of *In re Cranston* which was reported at [1898] 1 I.R. 457, and referred to with approval by Lord Cozens-Hardy in *In re Wedgwood*, [1915] 1 Ch. 113, at pages 117–8. What Lord Cozens-Hardy in that case says is this: "In the language of Holmes, "L.J. in *In re Cranston* gifts, 'the object of which is to prevent cruelty to "'animals and to ameliorate the position of the brute creation are charitable. "'If it is beneficial to the community to promote virtue and to discourage "'vice, it must be beneficial to teach the duty of justice and fair treatment "'to the brute creation, and to repress one of the most revolting kinds of "'cruelty'.

It has been argued by Mr. Upjohn that the inclusion in rule 1 of a reference to 'the promotion of justice to animals' is fatal to the claim of the Society to be a charity because, while the suppression of cruelty to animals may be a charitable purpose, as tending to improve the nature of mankind, the mere promotion of justice to animals as such is not a charitable purpose. I think that is really reading the first rule in a rather too strict and narrow manner. It is quite plain that purposes such as the prevention of cruelty to animals and the succouring and treatment of animals, at any rate those useful to man, are charitable purposes, as was recognised in a case to which I shall have to refer presently for the purposes of this case, that is to say *National Anti-Vivisection Society v. Inland Revenue Commissioners*, [1948] A.C. 31(1) . On page 67(2) thereof Lord Simonds, in what is one of the principal speeches in the House of Lords, clearly recognises that cases such as *London University v. Yarrow*⁽³⁾ , *Marsh v. Means*⁽⁴⁾ and *In re Wedgwood* (to which I have

referred), are all cases which are perfectly good law in so far as they refer to the matters p. 77 → which I have mentioned. It seems to me that rule 1 expresses rather the same idea as that expressed by Holmes, L.J., in the Irish case, the antithesis being between the doing of good and the prevention of wrong, that the whole idea is really the same, the suppression of cruelty to animals; so that so far as rule 1 is concerned this Society could properly claim to be a society formed for charitable purposes.

Rule 2 is in these terms: 'The Society shall offer practical teaching in "regard to the treatment of animals, humane education and enlightenment "by means of lectures, publications, exhibitions and demonstrations relating "to slaughter reform, transport, stabling, trapping, sports and all forms of "man's use and exploitation of animals'. That rule has also been criticised by Mr. Upjohn as being beyond the limits of charitable purposes, and there is no doubt something to be said for that view. There again I think this is really concerned with the means for securing proper treatment of animals so as to prevent cruelty to them and I do not think rule 2, though rather vague perhaps in its terms, is sufficient to prevent this Society being a charitable body.

Rule 3 says, 'The Society shall consistently expose and denounce "cruelty wherever practised, maintaining that compassion and justice are "the basic qualities of civilisation'. That seems to me to give no difficulty and therefore I pass on to rule 4.

Rule 4 is rather a longer rule, and it is in these terms: 'The Society "shall oppose vivisection and all experiments on animals "calculated to "cause pain" (definition of Cruelty to Animals Act of 1876) by exposing "the suffering inflicted and the failure to bring benefit to humanity. Further, "the Society shall give effective publicity to the constructive aspect of the "opposition to vivisection, to methods of research and healing dissociated "from experiments on animals, support medical freedom and the Science "of Health, thereby demonstrating the fact that the welfare of humanity "and that of animals are inter-related'. Now the reference to the Cruelty to Animals Act, 1876, is a reference to an Act which permitted the making of experiments upon animals, subject to considerable restrictions and safeguards, particularly applied in the case of horses, cats and dogs. It is therefore an Act which did permit vivisection. Now it is contended first of all, on behalf of the Society, that whatever may be the criticisms to which I shall come presently in regard to the terms of this particular rule, the whole of this rule is subject to rule 1 which expresses the object of the Society, and that rules 2 and 3 also must be controlled accordingly. That, I think, is an argument which cannot succeed. It is quite true that rule 1 is the only one which says the object of the Society shall be so-and-so, but I think it can be claimed that rules 2, 3 and 4 in this case are also leading objects of the Society; and indeed there is no doubt upon the evidence which was given on behalf of the Society that opposition to vivisection is one of the principal objects of the Society and one upon which the members place considerable importance. It is a matter which they regard as, I think, one of the important purposes of the Society. As to its meaning I will deal with that presently. That being so I have to consider rule 4 in the view which I take as being an independent object of the Society not controlled by rule 1 and I have to consider whether it is also within the ambit of charitable purposes. p. 78 →

In the case of *National Anti-Vivisection Society v. Inland Revenue Commissioners* (1) , [1948] A.C. 31, it was held that the objects of that society which were almost entirely, it would appear, the suppression of vivisection, were not charitable because—the last one is mentioned first in the headnote—the main object of the society was political in the promotion of legislation and secondly, any assumed public benefit in the advancement of morals would be far outweighed by the detriment to medical science and research and

consequently to public health. In that case the House of Lords reached that conclusion upon the evidence which was given in that case, which in their view showed that experiments involving vivisection were necessary for the proper pursuit of science and for producing benefit, not only it would appear, to the human race but also to animals; and therefore the necessities of the case and the benefits to mankind outweighed any undesirable consequence which might ensue to animals through there necessarily being perhaps some cruelty involved by the very nature of vivisection. Therefore they held that opposition to and suppression of vivisection involved something which was not for the benefit of the public but was indeed contrary to the benefit of the public, and for that reason they held that the purposes of the society were not charitable.

They reached that conclusion on a large body of evidence which was given in that case. In the present case the Commissioners of Inland Revenue did not call the same evidence. On the other hand evidence was given for the Society by a number of witnesses who were duly cross-examined. It is said first of all, on behalf of the Inland Revenue Commissioners, that it was unnecessary to call any of the evidence which was given in the case in the House of Lords to which I have referred because I ought to take judicial notice of the large and important and perhaps overwhelming body of evidence which was given in that case. It was therefore unnecessary to call it again as it would be a burden upon the Revenue to call such evidence on each occasion. I do not think that is the right view. I do not think I can consider myself as entitled to take judicial notice of the evidence which was given in a different case. Quite true the Inland Revenue was a party, but there was quite a different party, a different society, involved in that case, and it is evidence given between other persons. The general rule is that evidence given between other persons in another action is not evidence in some different action. Therefore I shall not feel myself at liberty to treat all the evidence given in the House of Lords case as having been before me in the present case through merely being asked to take judicial notice of it.

That does not conclude the matter. The witnesses were cross-examined in the present case and they had to admit, and did admit, that the larger body of medical opinion regarded, contrary to their own views, vivisection as a beneficial course in the pursuit of science and medicine generally, and that products which were the result of experiments conducted in that way were in fact of use, in the view of the majority, for purposes of treatment, healing and so on. The Special Commissioners it seems to me were entitled to treat those admissions as establishing the view that the evidence given before them by the particular witnesses was mistaken. They were entitled to have regard to the nature of the particular witnesses before them and the impressions which they made upon them and to say that their views, though honestly held, were mistaken. It seems to me, therefore, p. 79 → there was ample evidence upon which the Special Commissioners in the present case could come to the conclusion that the view which was accepted by the House of Lords on the evidence given in that case was also the view which ought to be accepted by them on the evidence which was given in the present case. They therefore were entitled, in my opinion, to come to the conclusion that the better view was that the benefits of vivisection and the experiments conducted in the course of it outweighed the disadvantages to which the witnesses had referred. Accordingly, in my view, I am entitled to treat the conclusion reached by the House of Lords in the 1948 appeal case⁽¹⁾ as the right conclusion which the Special Commissioners properly reached in the present case.

What is the result of that? The result of that is that I must take the view that suppression of vivisection is contrary to the benefit of the community and therefore not a charitable purpose in law.

That being the conclusion at which I have arrived, I turn to rule 4 and I have to consider the various arguments which were made in respect of that. It was said that rule 4 did not involve the suppression of vivisection but merely opposition to it, which was a different matter, and that it was educational rather than for the purpose of suppressing by repealing the Act of 1876 or promoting any other legislation, and therefore it did not fall within the criticisms which were made in the House of Lords case. I do not think those arguments can succeed. It does not seem a correct reading of rule 4, and also it seems to me to be one which is quite inconsistent with the conduct of the Society's affairs as shown by the evidence which was given before the Special Commissioners. It seems to me that the matters which are to be done—observe the word 'shall' used in the rule—must necessarily in the end involve an attack upon the Cruelty to Animals Act, 1876, and therefore involve the promotion or the support of legislation for repealing that Act and for suppressing vivisection altogether. It seems to me the Society is a society a large part of whose activities are directed to the suppression of vivisection, and therefore this rule 4 comes within the decision of the House of Lords in *National Anti-Vivisection Society v. Inland Revenue Commissioners*. Because that is one of the objects of the Society, that is fatal to the Appellant Society's claim to exemption and therefore this appeal should be dismissed.

Mr. Upjohn.—I ask your Lordship to dismiss it with costs.

Danckwerts, J.—Yes, you are entitled to your costs.

[Solicitors:—Halsey, Lightly & Hemsley; Solicitor of Inland Revenue.]

- (1) Here followed a list which is omitted from the present print. The list included the Rules of the Society, extracts from the Report of the Royal Commission on Vivisection 1912; and a number of books, pamphlets etc.
- (2) Not included in the present print.
- (1) Not included in the present print.
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- (1) 28 T.C. 311 (/cch_uk/btc/28-tc-311).
- (1) 28 T.C. 311 (/cch_uk/btc/28-tc-311).
- (2) *Ibid.*, at pp. 370–1
- (3) (1857) 1 De G. & J. 72.
- (4) (1857) 3 Jur. (N.S.) 790.
- (1) 28 T.C. 311 (/cch_uk/btc/28-tc-311).
- (1) National Anti-Vivisection Society v. Commissioners of Inland Revenue, 28 T.C. 311 (/cch_uk/btc/28-tc-311).