

1971

Feb. 17

[JOSEPHIDES, J.]

THE BISHOP  
OF KITIUM  
AND OTHERS  
AS TRUSTEES  
OF THE  
DIANELLOS  
CHARITY  
(No. 1)  
v.

THE BISHOP OF KITIUM AND OTHERS AS TRUSTEES  
OF THE DIANELLOS CHARITY (No. 1),

*Plaintiffs,*

v.

THE ATTORNEY-GENERAL OF THE REPUBLIC,

*Defendant.*

THE ATTORNEY-  
GENERAL  
OF THE  
REPUBLIC

(*Charity Application No. 1/70*).

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*Charitable trusts—Charity trustees—Application to sanction agreement for development of trust property—Sections 13 and 14 of the Charities Law, Cap. 41—Proposed development held to be within the directions given in the will and the spirit of the donor—And that project undertaken is for the benefit and advantage of the trust—Agreement sanctioned subject to terms.*

*Charity trustees—Powers of trustees to invest money—The Trustee Law, Cap. 193, sections 4 to 11.*

*Charitable trusts—Mortgaging, selling or otherwise disposing of any property subject to a charitable trust—Law applicable—Sections 23, 28 and 29 of the (English) Charities Act, 1960—Applicable by virtue of section 15 of the Charities Law, Cap. 41.*

The facts sufficiently appear in the judgment of the Court, granting the application made by the trustees of the Dianellos' Charity under the provisions of sections 13 and 14 of the Charities Law, Cap. 41.

### **Charity Application.**

Application by the members of the Board of Management of the Charity known as the "Orphanage and Training School, Demetrakis G. Dianellos of Larnaca", for the sanction of an agreement, entered into between the plaintiffs and the Holy Archbishopric of Cyprus on the 1st November, 1967, relating to the development of certain immovable properties belonging to the said Charity.

*G. M. Nicolaidis with G. Tornaritis, for the plaintiffs.*

*A. Frangos, Senior Counsel of the Republic, for the defendant.*

The following judgment was delivered by :—

JOSEPHIDES, J.: This application is made by the trustees of the Dianellos' charity under the provisions of sections 13 and 14 of the Charities Law, Cap. 41. The Court is prayed—(a) to sanction an Agreement entered into on the 1st November, 1967, between the plaintiffs, to whom I shall refer as the "trustees", and the Holy Archbishopric of Cyprus, to whom I shall refer as the "partner"; and (b) to give all consequential directions for the implementation of the Agreement which is in respect of the following immovable properties which form part of the trust property, all situate in the town of Scala, Larnaca :—

Registration	C.276	in respect of plot	281
"	C.277	"	282
"	C.278	"	283
"	C.279	"	284
"	C.280	"	285
"	C.281	"	286
"	C.282	"	287
"	C.283	"	288
"	C.284	"	289
"	C.286	"	291
"	C.287	"	292
"	C.288	"	293
"	C.289	"	294

All the registrations are dated the 10th August, 1961.

The present charitable trust was created by the late Demetrakis G. Dianellos, of Larnaca, by trust deeds which were made on the 15th and 20th December, 1949, and it was incorporated as a charity under the provisions of the Orphanage and Training School (Demetrakis G. Dianellos of Larnaca) Law, Cap. 353, which was enacted on the 11th January, 1950. By section 3 of the Law this trust was established as a body corporate with perpetual succession and a corporate seal. There are other provisions in the Law regarding the vesting of the property, the management and control, etc. and section 8 provides that the Supreme Court and the Attorney-General shall have and exercise, in respect of the said Orphanage and the Training School, the same powers vested in and exercised by them respectively under the Charities Law, Cap. 41.

1971  
Feb. 17

—  
THE BISHOP  
OF KITIUM  
AND OTHERS  
AS TRUSTEES  
OF THE  
DIANELLOS  
CHARITY  
(No. 1)

v.  
THE ATTORNEY-  
GENERAL  
OF THE  
REPUBLIC

1971

Feb. 17

—  
THE BISHOP  
OF KITIUM  
AND OTHERS  
AS TRUSTEES  
OF THE  
DIANELLOS  
CHARITY  
(No. 1)  
v.  
THE ATTORNEY-  
GENERAL  
OF THE  
REPUBLIC

Subsequent to the creation of the charitable trust the settlor made a will on the 5th March, 1950, and he died on the 1st April, 1950. The will was probated in the District Court of Larnaca on the 17th December, 1951, in Action No. 484 of 1950. By his will the late Dianellos, after leaving certain legacies to private individuals, bequeathed the residue of his property to this charity. Under clause 10 (e) he directed that any cash that may be left after the payment of the legacies shall be utilised in erecting a hotel on his property known as "Sun Hall" in Larnaca. It is with this clause of the testator's will that we are concerned in these proceedings, as it is the trustees' case that no sufficient cash was left after the payment of the legacies to enable the executors and trustees to carry out the wishes of the testator. With this end in view the Agreement, which is the subject of the present proceedings, was entered into between the trustees and the Archbishopric of Cyprus for the purpose of developing the property described above, which includes the land on which the "Sun Hall" building was situate. I say "was situate" because the building was in a dilapidated condition and it has, in the meantime, been demolished. A copy of the Agreement is annexed to the present judgment for record purposes\*.

The material terms of the Agreement are the following : The contracting parties shall form a partnership under the name "Sun Hall" for the erection of a hotel, shops etc., and the running of the hotel business, and renting of the other property. The land, which will be contributed by the charity, is valued at £125,000 (one hundred and twenty-five thousand pounds); the partner will contribute the same amount in cash and any funds required in excess of that sum shall be contributed in equal shares by both parties to the Agreement. Profits and losses will be shared equally and the management of the project and the partnership will be carried out jointly by both parties. Proper accounts will have to be kept and audited, and such accounts shall be furnished to the competent authorities under the provisions of the Charities Law. The duration of the partnership shall be for a minimum period of fifty (50) years.

The area of the land contributed by the trustees to the partnership is two donums, one evlek and 2032 sq. ft. which is equivalent to 33,472 sq. ft. in all, and it is situate in one

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\* See p. 108 *infra*.

of the best localities of Larnaca town by the seaside. The buildings proposed to be erected will consist of a four-star hotel with 114 bedrooms, 15 shops on the ground floor, and a block of flats consisting of 10 office units on the first floor, 10 flats on the second floor and 10 flats on the third floor. The reason given for the conclusion of this Agreement is stated in paragraph 8 of the affidavit of the Secretary of the Dianellos' charity, Mr. M. C. Michaelides, filed on the 7th May, 1970 : 'The trustees " could not secure the funds for the development of the property and the Holy Archbishopric has the funds, experience and know-how of developing property and the means to secure a profitable operation of the hotel and the other property" '.

1971  
Feb. 17  
—  
THE BISHOP  
OF KITIUM  
AND OTHERS  
AS TRUSTEES  
OF THE  
DIANELLOS  
CHARITY  
(No. 1)  
v.  
THE ATTORNEY-  
GENERAL  
OF THE  
REPUBLIC

The present application was filed on the 7th May, 1970, and the following affidavit evidence was filed in support at the time :

- (a) affidavit by M. C. Michaelides, Secretary of the Dianellos' charity, consisting of 1½ pages ;
- (b) affidavit by A. Philippou, Architect, describing the construction proposed to be built, the estimated cost (£600,000) and, in his opinion, the " annual income " as £228,000, without giving any particulars in support ;
- (c) affidavit by E. Efthymiades, a Land Registry Clerk, giving an estimate of the value of the land in question without any reasoning or comparable sales.

In view of the paucity of evidence in support of an application involving a project of the magnitude of some £800,000 (eight hundred thousand pounds), the Court gave directions for further affidavit evidence to be filed and in fact directions were given repeatedly by the Court for the preparation of the case and the filing of the evidence necessary to support the application. Directions were first given on the 22nd May, 1970 and 24th June, 1970 ; then the case came on for hearing on the 1st July, 1970, but the trustees were not ready and the Court gave further directions in the matter as appearing in five pages of the minutes on the record. On that date (1.7.1970) the Court also directed the preparation and filing of a feasibility report by an expert as the trustees had failed up to that time to secure such a report for their guidance and, indeed, they had not sought any expert advice from a business consultant in respect of such a big project, which is, to say the least, regrettable.

1971

Feb. 17

—  
THE BISHOP  
OF KITIUM  
AND OTHERS  
AS TRUSTEES  
OF THE  
DIANELLOS  
CHARITY  
(No. 1)

v.  
THE ATTORNEY-  
GENERAL  
OF THE  
REPUBLIC

The feasibility report directed by the Court was filed on the 24th September, 1970. It was prepared by Mr. Renos Solomides, a former Minister of Finance of the Republic and now a business adviser and general consultant. The main body of the report consists of 26 pages, in addition to the appendices. After reading this report I gave further directions, *inter alia*, asking the trustees to re-assess the situation in the light of the report. I shall presently refer in detail to that report.

As the trustees delayed in considering this report and filing the evidence which had been directed by the Court, further directions were given on the 1st December, 1970, and the matter was fixed for the 14th December to enable the trustees to give a report to Court of the action taken by them and to complete the documentary evidence in support of the application. On the 14th December, 1970, the trustees reported to Court on the action taken by them and they stated that they had not up to that date considered the feasibility report nor reassessed the situation in the light of that report. They were again asked to do so and eventually they filed all their documentary evidence by the 22nd January, 1971.

With regard to the Agreement, of which approval is sought in the present application, I think it should be stated that although the trustees filed what appeared to be a photocopy in May, 1970, they delayed for 7½ months the filing of the original Agreement, as directed by the Court, that is, they did not file such Agreement until the 28th December, 1970. It would seem that the original was misplaced and a duplicate one had to be signed. It should be noted that the photocopy originally filed is not an exact copy of the agreement now before the Court as such photocopy did not bear the signature of any witnesses, while the agreement now before the Court bears the signatures of two witnesses. Be that as it may, we now have before us the actual Agreement duly signed by the parties and attested by two witnesses.

In compliance with the Court's directions the following further affidavit evidence was placed before the Court :

- (i) a second affidavit by E. Efthymiades, Land Registry Clerk, regarding the value of the land ;
- (ii) affidavit by M. C. Michaelides, Secretary of the charity, giving the various particulars required by the Court with regard to the financial position

of the charity and stating, *inter alia*, that the tobacco factory, which had been bequeathed by the deceased Dianellos, had closed down on the 31st December, 1969, owing to losses. The latest audited accounts of the charity for the year ending 31st December, 1969, the minutes of the trustees dated the 2nd October, 1967, when the decision was taken to enter into the Agreement in question, and other documentary evidence regarding the property of the charity were annexed to this affidavit, as directed by Court ;

- (iii) affidavits by all the trustees affirming the information given by the secretary of the charity ;
- (iv) affidavit by Constantinos Christofides, a certified accountant, with regard to the advice he tendered to the trustees regarding the proposed investment ;
- (v) a further affidavit by E. Efthymiades, Land Registry Clerk, supplementing his valuation report which had been found inadequate by the Court ;
- (vi) a further affidavit by M. C. Michaelides, the secretary of the charity, correcting wrong information which had been given in his previous affidavits ;
- (vii) affidavit by Mr. Renos Solomides, the financial expert, verifying his report ;
- (viii) solemn affirmation by the Chairman of the Trustees stating the rate of interest of certain investments which appeared in the charity's accounts (which did not show such rate), and stating that these investments were made without any security ; and, finally,
- (ix) affidavit by Mr. K. Economides, one of the trustees, sworn on the 20th January, 1971, and filed on the 22nd January, 1971, giving full particulars with regard to the last meeting of the trustees held on the 7th January, 1971, at which the position was reassessed in the light of the financial expert's report.

As already stated, the feasibility report or viability study, as it has been described by the expert (Mr. Renos Solomides), was filed on the 24th September, 1970. I must here place on record my appreciation for Mr. Solomides's thorough report which has considerably helped the Court in the

1971  
Feb. 17

—  
THE BISHOP  
OF KITIUM  
AND OTHERS  
AS TRUSTEES  
OF THE  
DIANELLOS  
CHARITY  
(No. 1)  
v.  
THE ATTORNEY-  
GENERAL  
OF THE  
REPUBLIC

1971  
Feb. 17

THE BISHOP  
OF KITIUM  
AND OTHERS  
AS TRUSTEES  
OF THE  
DIANELLOS  
CHARITY  
(No. 1)  
v.  
THE ATTORNEY-  
GENERAL  
OF THE  
REPUBLIC

consideration of the matter in hand. The cost of the project is analysed at page 13 of the report as follows :

" HOTEL :		£
Building .. .. .	.. .. .	217,187
Airconditioning .. .. .	.. .. .	55,000
Plant & Machinery .. .. .	.. .. .	46,000
Furniture & Fittings .. .. .	.. .. .	63,100
Operating equipment .. .. .	.. .. .	26,600
Motor vehicle .. .. .	.. .. .	1,200
		<hr/>
		£409,087
SHOPS AND FLATS, incl. extras .. .. .	.. .. .	154,713
10% CONTINGENCIES .. .. .	.. .. .	56,380
		<hr/>
	TOTAL	<u>£620,180</u>

The above cost should be *augmented* by the so-called 'Development Expenses', viz. £40,000 comprising preliminaries and various fees, estimated at 5%, and interest during construction. These expenses are usually amortised on a ten-year period. No provision is made for pre-opening expenses."

The hotel component of the project will cost £569,195 that is, the cost per bed will be £2,497, which is not considered unreasonable.

The *capital cost* will, eventually, be as follows :—

Construction cost, furniture etc. (as above)	£660,180
Land cost (provided by the trustees) ..	£125,000
	<hr/>
	<u>£785,180</u>

On that basis the trustees of the Dianellos charity will be required to provide the sum of £267,590 in cash as their share in the project on a fifty-fifty basis with their partner, considering that the trustees will have already provided the land which is valued at £125,000.

Originally the trustees proposed raising the above sum of approximately £268,000 from outside sources with the consequential high cost of interest.

On the basis of the above data, the expert was of the view that the project would have an estimated net *loss* of over

£90,000 (ninety thousand pounds), during the first five years, and in the concluding part of his report he expressed the following views (at page 23) :—

“ 3. The appraisal shows a capital cost of £785,180. The estimated cost of the hotel component of the project (including the value of land apportioned *pro rata* to its cost of construction) is £569,195 i.e. £2,497 per bed. For a 4-star hotel this cost per bed is not unreasonable especially having in mind the expensive land on which it is erected.

4. The gearing of the project is not satisfactory. The land cost represents 19% of the construction and completion costs. The non-interest part of the required cash capital is only 19% which is considered rather low, the more so that about one-third is destined for real estate development, whereas its estimated gross income is hardly 10%. No doubt, allowing such investment to rely almost wholly on credit finance could not but provide rather disappointing yields.

5. The hotel operation returns are directly influenced by the average annual bed occupancy achieved and this very much depends on the evolution of the tourist traffic in Cyprus.

6. It has been established that there is bed demand in Cyprus which is still far from being satisfied. Though the existence of such demand is of fundamental importance and an essential pre-requisite to the success of any hotel project, yet it should not be overlooked that bed occupancy depends upon many factors, already enumerated, and upon the quality of service that the proposed hotel will manage to offer to its local and international clientèle.

7. In this respect, the association of the Trust to the Archbishopric is vitally important as the latter owns or controls a chain of hotels, *viz.* Ledra Palace in Nicosia, Miramare in Limassol and Aspelia in Famagusta. The expertise which will be further acquired about the hotel industry, by the time the Sun Hall hotel is completed, constitutes a highly important consideration in favour of the association of the Trust to the only local set-up which can provide a certain ‘know-how’ in this specific field.

Another significant fact is that the Church Group shall control in almost every town an appreciable

1971  
Feb. 17

—  
THE BISHOP  
OF KITIUM  
AND OTHERS  
AS TRUSTEES  
OF THE  
DIANELLOS  
CHARITY  
(No. 1)  
v.  
THE ATTORNEY-  
GENERAL  
OF THE  
REPUBLIC



1971

Feb. 17

—  
THE BISHOP  
OF KITIUM  
AND OTHERS  
AS TRUSTEES  
OF THE  
DIANFLOS  
CHARITY  
(No. 1)

v.

THE ATTORNEY-  
GENERAL  
OF THE  
REPUBLIC

number of first class beds and from the occupancy point of view one would reasonably expect that Sun Hall could thus hope to achieve relatively high rates of bed sales from the start.

This is a fair assumption—in any case a single hotel unit stands much better marketing chances when the unit is associated to a strong group—and it should be further borne in mind that economies of scale shall also result.

8. In case the mode of financing is altered so that the interest burden is alleviated, say a minimum equity of another £100,000 is provided by both parties, and the non-cash charges are spread at a flat rate of 5% which is more realistic, there being no fiscal inducement otherwise commanding, then the project should be expected to show " (losses during the first three years and profits thereafter).

Finally, the expert concluded his report as follows (at page 26) :—

" 12. The estimated returns indicate that *the project as a whole is a viable one but only just*. In order to make it more remunerative, high bed occupancies must firstly be attained and/or the tariffs improved and/or the equity substantially increased.

The Trustees have also to consider whether it is technically possible and economically desirable to reduce or abandon the Real Estate aspect of the Project which requires about one third of the capital investment and has a comparatively low yield. This is a matter beyond my terms of reference.

It is also indispensable that the Trustees—and their Associates—secure public finance to the greatest possible extent because accommodation demand is there but peace conditions, on which its growth depends, are yet unsettled.

Finally, certain inponderables to which reference is made in this study, such as the ill-effects from the vicinity of the oil refinery, should be carefully assessed and formal assurances obtained before the Trustees embark on a project of such magnitude.

If it were not too late, the Trustees could endeavour to negotiate with their Associates, who are assumed

to have been selected primarily on grounds of their hotel expertise, a reasonable guaranteed bed occupancy in order to reduce the risks—in view of the nature of funds they have the responsibility to manage—and secure a steady source of minimum income for the Trust.”

By his expression “the equity substantially increased” the expert meant that the trustees should provide cash themselves so that they will be saved the considerable amount they would have to pay by way of interest if they had to raise a loan.

After considering the several questions of substance raised in the expert’s report which was filed on the 24th September, 1970, I gave directions on the 28th September, 1970, that the trustees should re-assess the situation in the light of that report. They eventually did so at a meeting which was held on the 7th January, 1971, and an affidavit was sworn by Mr. Kypros Economides, one of the trustees, which was filed in Court on the 22nd January, 1971, giving particulars of the matters considered and decisions taken by the trustees. Mr. Economides gave evidence in Court, two days ago (on the 15th February) supplementing his affidavit. The net result of his evidence is that they considered the following points :

- (a) With regard to the “ ill effects from the vicinity of the oil refinery ”, the trustees had the assurance of at least three Ministers of Commerce of the Republic of Cyprus, that the refinery would not in any way affect prejudicially the town of Larnaca ;
- (b) with regard to the financing of the project, the trustees had since the signing of the Agreement in 1967 made certain arrangements which would enable them to provide practically the whole cash required for the project. I shall be referring to that later in this judgment ;
- (c) as regards the real estate aspect of the project, the trustees took the view that it would not be advisable to put all their money in a hotel business, and that is why they divided the project in two parts :

The hotel business and the real estate part, that is, the building of the shops, flats and offices.

Reverting to the question of the financing of the project by the trustees, two applications were filed in this Court

1971  
Feb. 17  
—  
THE BISHOP  
OF KITIUM  
AND OTHERS  
AS TRUSTEES  
OF THE  
DIANELLOS  
CHARITY  
(No. 1)  
v.  
THE ATTORNEY-  
GENERAL  
OF THE  
REPUBLIC

1971

Feb. 17

—  
THE BISHOP  
OF KITIUM  
AND OTHERS  
AS TRUSTEES  
OF THE  
DIANELLOS  
CHARITY  
(No. 1)

v.

THE ATTORNEY-  
GENERAL  
OF THE  
REPUBLIC

about three weeks ago (Nos. 1/1971 and 2/1971) asking for the sanction of the Court to sell certain property of the charity for a sum of about £205,000 and the Court will be shortly dealing with those applications. The trustees will also have to realize certain investments (to which I shall refer later), so that in the end, if the sales are approved by the Court, the total cash which the trustees will have available, will be around £228,000 and they may eventually require to raise a loan of only £40,000 approximately.

On the basis of these new data the expert, having reconsidered the matter, gave evidence before me two days ago. The following is a summary of his evidence, which I accept :

“ In view of the suggestion now made that the gearing of the project will, to a great extent, be improved by the provision of equity (cash) by the trust, the expected return on the investment is substantially improved ”. The question of the profitability “ very much depends on the occupancy rates which the hotel project will achieve and on the operating expenses, and this is the reason why in the ‘ study ’ several assumptions have been made, so that the comparative assessment is possible of the situations as they may be developed depending on the growth of tourism in Cyprus and the managerial ability of the partnership ”. Although originally the expert was of the view that the project would have losses exceeding £90,000 during the first five years, considering now the revised data, the position had improved, as the trust would not have to pay much interest, and he reckoned that profits would result from the first year of the operation. He estimated the profits as follows : £25,000 in the first year, £38,000 in the second and third years, £52,000 in the fourth and fifth years, £66,000 in the sixth and seventh years, £79,000 in the eighth and ninth years and £100,000 in the tenth year.

Regarding the real estate development, Mr. Solomides was of the view that the high cost of the land did not, at first sight, justify the inclusion of the real estate factor into the hotel business. But, eventually, he expressed the view that the trustees, by including a real estate development, adopt an attitude of caution which affects the profitability of the project but they feel more secure, probably in view of the nature of the funds involved in this project ; and he concluded that the position is now materially improved because the third factor, the provision of the equity or cash, has been satisfied.

However, the expert advised that the trustees should consider the following matters for the purpose of improving on the project :

- (a) If a minimum occupancy could be guaranteed by the partner then the real estate operation could be entirely modified, which means that it could be reduced or abandoned ; and
- (b) the question of the nuisance (by smell) that may be caused by the oil refinery to the tourists who will be staying in the hotel, should not be underestimated.

The Court considers it highly desirable that the trustees should give *both matters* their serious consideration and take any action that they may find is for the advantage of the project. Moreover, in connection with question (b) above, the trustees should seek a formal assurance from the oil-refinery company that the running of the refinery will not cause any nuisance to the hotel residents.

In considering the financial position of the charity in connection with its ability to finance the project, it appeared from their accounts that the trustees advanced the following loans, without security, and at uneconomic rates (see page 14 of the expert's report). These are :

- (a) £ 30,000 to G. D. Dianellos & Son Ltd., at 6% p.a. :  
    £20,000 (expiry) 16.4.1968 ;  
    £10,000 (expiry) 1.1.1968 ;
- (b) £ 2,000 to " Pedhiki Exohi Larnacos ", at 2% p.a. :  
    (expiry) 23.3.1967 ;
- (c) £10,000 to the Holy Bishopric of Kitium, at 6½% p.a. :  
    (expiry) 31.3.1967 ;
- (d) £11,000 to St. Lazaros Church, at 6½% p.a. :  
    (expiry) 2.3.1969.

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53,000

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These investments appear to have been made without security, in breach of the provisions of the law (see later in this judgment), and the trustees will have to realise these investments in order to finance the project under consideration instead of having to raise a loan at higher rates of interest or sell trust property to that extent. Apart

1971  
Feb. 17  
—  
THE BISHOP  
OF KITIUM  
AND OTHERS  
AS TRUSTEES  
OF THE  
DIANELLOS  
CHARITY  
(No 1)  
v  
THE ATTORNEY-  
GENERAL  
OF THE  
REPUBLIC

1971

Feb. 17

—  
THE BISHOP  
OF KITIUM  
AND OTHERS  
AS TRUSTEES  
OF THE  
DIANELLOS  
CHARITY  
(No. 1)  
v.  
THE ATTORNEY-  
GENERAL  
OF THE  
REPUBLIC

from the loan due by the factory D. G. Dianellos & Son Ltd., Mr. Economides, one of the trustees, stated in evidence that the other three loans could be collected not later than the end of this year (1971).

With regard to the powers of the charity trustees to invest money, this is what is stated in Tudor on Charities (1967), 6th edition, at page 440 : " The powers and duties of trustees of a charity, in relation to investment of trust funds, are governed, in general, in the same manner as in the case of non-charitable trusts by the terms of the trust instrument (if any) and by the general law of trusts relating to investments ". Our general law of trusts relating to investments is the Trustee Law, Cap. 193, sections 4 to 11. The Court has no doubt that the charity trustees will in future be legally advised to comply with the provisions of the law.

With regard to the loan of £30,000 advanced to the tobacco factory D. G. Dianellos & Son Ltd., it was stated that that factory closed down on the 31st December, 1969, as it was being run at a loss. The secretary of the charity gave the following figures in his affidavit : That the factory had profits amounting to £139,500 between 1953 and 1963 ; and that it had losses amounting to £62,549 for the period 1st July, 1964 to the 31st December, 1969. It is not within my province in these proceedings to enquire into the causes of the failure and closing down of that factory at a time when other tobacco factories are flourishing, but, perhaps, the Attorney-General of the Republic, as *parens patriae*, might consider it desirable to inquire into this matter. So far as the financing of this project is concerned, I shall direct the trustees to take steps to collect the sum of £30,000 due to the charity, or any part that may be recovered, without any delay.

Having summarised the evidence adduced before me, I shall now deal with the law applicable. This is the Charities Law, Cap. 41, sections 13, 14 and 15. *Inter alia*, section 13 (c) provides that the Supreme Court has power " to sanction the sale or other disposition of any property subject to any charitable trust on being satisfied that such sale or disposition is for the benefit and advantage of the charity ".

Section 15 provides that " All proceedings under this Law shall be instituted, heard and determined by the Supreme Court in accordance with the law relating to charitable trusts for the time being in force in England ".

The law in force in England which is applicable to the present case, is the Charities Act, 1960, which was enacted and came into operation on the 29th July, 1960, shortly before Independence in Cyprus. I shall presently refer to the material sections, but before I do so, I think that I ought to refer to an extract from Halsbury's Laws (third edition), to which reference has been made by learned counsel in this case. This is to be found in Halsbury's Laws of England, third edition, volume 4, page 334, paragraph 688, and it reads as follows :

“ There is no positive rule of law absolutely prohibiting the sale of charity lands, but such sale is rarely justifiable, the presumption being that persons who give lands to a charity intend that they should be devoted to that purpose in perpetuity.”

Considering that the law in Halsbury's as stated above, is the law in force on the 1st August, 1953, I am of the view that this extract is no longer good law having regard to the express provisions of sections 29, 28 and 23 of the Charities Act, 1960. I have considered it necessary to deal with this point in order to dispel the misapprehension under which some charity trustees may be labouring that they may mortgage, sell or otherwise dispose of any property subject to a charitable trust. Let this serve as a warning to all concerned that if they deal in any way with trust property without the express sanction of the Court they will be guilty of breach of the law and liable to the consequences.

Section 29 of the Charities Act, 1960, reads as follows :

“ 29. *Restrictions on dealing with charity property* :

(1) Subject to the exceptions provided for by this section, no property forming part of the permanent endowment of a charity shall, without an order of the Court or of the Commissioners, be mortgaged or charged by way of security for the repayment of money borrowed, nor, in the case of land in England or Wales, be sold, leased or otherwise disposed of.

(2).....

(3) This section shall apply notwithstanding anything in the trusts of a charity, but shall not require the sanction of an order—

(a) for any transaction for which general or special authority is expressly given (without the authority being made subject to the sanction

1971  
Feb. 17  
—  
THE BISHOP  
OF KITIUM  
AND OTHERS  
AS TRUSTEES  
OF THE  
DIANELLOS  
CHARITY  
(No. 1)  
v.  
THE ATTORNEY-  
GENERAL  
OF THE  
REPUBLIC

1971

Feb. 17

THE BISHOP  
OF KITIUM  
AND OTHERS  
AS TRUSTEES  
OF THE  
DIANELLOS  
CHARITY  
(No. 1)  
v.

THE ATTORNEY-  
GENERAL  
OF THE  
REPUBLIC

of an order) by any statutory provision contained in or having effect under an Act of Parliament or by any scheme legally established ; or

(b) for the granting of a lease for a term ending not more than twenty-two years after it is granted, not being a lease granted wholly or partly in consideration of a fine ; or

(c) for any disposition of an advowson.

(4) ..... ”

The Attorney-General of the Republic, who is a necessary party to such proceedings under the provisions of the law, has authorised the trustees in writing under the provisions of section 14 (3) of the Charities Law, Cap. 41, to institute the present proceedings, and he has appeared through counsel who is supporting the present application.

With regard to clause 10 (e) of the donor's will, on the evidence before me I find that no sufficient cash was left to enable the erection of a hotel on his immovable property known as " Sun Hall " ; and I am further satisfied that the proposed development of the trust property in question is, in the circumstances, within the directions given in the will and the spirit of the donor.

Having given the matter my best consideration, on the evidence adduced, including the feasibility report and the supplementary evidence of Mr. R. Solomides, I am satisfied that the project undertaken under the provisions of the Agreement in question is for the benefit and advantage of the trust, and I accordingly ORDER as follows :—

1. The Agreement dated the 1st November, 1967, between the Dianellos Charity and the Holy Archbishopric of Cyprus, is hereby approved, subject to the terms embodied in paragraphs 2 to 5 below ; and it is hereby directed that such Agreement be carried into effect.

2. The total capital cost of the whole project (excluding the value of the land), undertaken under the said Agreement, shall not exceed the sum of £661,000 (six hundred and sixty-one thousand pounds) ; and the contribution in cash of the Dianellos Charity shall not exceed the sum of £268,000 (two hundred and sixty-eight thousand pounds).

3. The proviso to clause 4 of the Agreement shall be amended as follows : Any dispute within the ambit of

that proviso shall not be referred to the senior judicial officer in Cyprus but it shall be referred to a single arbitrator in accordance with the provisions of the Arbitration Law, Cap. 4, or any statutory modification or re-enactment thereof for the time being in force.

4. The partnership formed under the said Agreement shall be subject to the provisions of the Charities Law for the time being in force, as provided under clause 6 of the Agreement ; and, having regard to the wish expressed in clause 10 (e) of the will of the late D. G. Dianellos, the part of the property on which the old " Sun Hall " building stood (which forms part of the permanent endowment of the Dianellos charity), after transfer to the partnership, shall not, without an order of the Court, be mortgaged or charged by way of security for the repayment of money borrowed, nor be sold or otherwise disposed of.

5. The partnership shall keep books of account and render audited accounts in compliance with the provisions of clauses 5 and 6 of the Agreement and pursuant to the provisions of section 10 of the Charities Law, Cap. 41, or any statutory modification or re-enactment thereof for the time being in force. Copy of such accounts shall also be filed in this Court by the trustees of the charity annually. The first of such accounts shall be filed in Court on the 1st March, 1972.

*Directions to the Trustees (Plaintiffs)*

6. The trustees are hereby directed to realize the following investments (which have been made without security) not later than the 31st December, 1971, for the purpose of financing the project undertaken under the said Agreement, instead of having to raise a loan for the purpose :—

- (a) The sum of £2,000 at 2% p.a. advanced to the " Pedhiki Exochi " Larnacos ; date of expiry 23.3.67 ;
- (b) the sum of £10,000 at 6½% p.a. advanced to the Bishopric of Kitium ; date of expiry 31.3.67 ;
- (c) the sum of £11,000 at 6½% p.a. advanced to St. Lazaros Church ; date of expiry 2.3.69.

7. The trustees shall open a separate bank account (and/or a separate deposit or fixed deposit account) in which they shall keep all the moneys realized from the investments referred to in the preceding paragraph, as well as any other

1971  
Feb. 17

—  
THE BISHOP  
OF KITIUM  
AND OTHERS  
AS TRUSTEES  
OF THE  
DIANELLOS  
CHARITY  
(No. 1)  
v.  
THE ATTORNEY-  
GENERAL  
OF THE  
REPUBLIC



1971  
Feb. 17

—  
THE BISHOP  
OF KITIUM  
AND OTHERS  
AS TRUSTEES  
OF THE  
DIANELLOS  
CHARITY  
(No. 1)  
v.  
THE ATTORNEY-  
GENERAL  
OF THE  
REPUBLIC

investments and the proceeds of sale of any property that may be authorised by the Court, such moneys to be utilized exclusively in financing the aforesaid project, and nothing else.

8. With regard to the sum of £30,000 (thirty thousand pounds) advanced to the tobacco factory G. D. Dianellos & Son Ltd. which is stated to have closed down since the 31st December, 1969, the trustees are hereby directed to take steps, without delay, in consultation with the Attorney-General of the Republic, to collect this sum or any recoverable part thereof, and to utilize it in financing the aforesaid project.

9. The trustees shall, within six months from today, file in this Court a progress report of the action taken by them for the purpose of carrying the above terms and directions into effect.

*Nicolaides* : On behalf of the trustees I wish to apologise for the delay in preparing their case and the trouble given to the Court. I shall advise them regarding their duties as charity trustees.

COURT : I thank you, Mr. Nicolaides. I have no doubt that the trustees will in future carry out their duties under the law and without any delay.

*Application granted in terms.*

The following is the Agreement dated the 1st November, 1967, which is referred to in this judgment, at page 94 *supra* :—

«Επειδή τὸ Ὀρφανοτροφεῖον καὶ ἡ Ἐπαγγελματικὴ Σχολὴ τοῦ Δημητρίου Γ. Διανέλλου ἐκ Λάρνακος (ἐν τοῖς ἐφεξῆς ἀναφερόμενον ὡς τὸ «Ὀρφανοτροφεῖον») ἀποτελεῖ νομικὸν πρόσωπον, συμφώνως πρὸς τὸ ἄρθρον 3 τοῦ περὶ Ὀρφανοτροφείου καὶ Ἐπαγγελματικῆς Σχολῆς (Δημητρίου Γ. Διανέλλου ἐκ Λάρνακος) Νόμου (Κεφ. 353), καὶ διοικεῖται συμφώνως πρὸς τὸ ἄρθρον 5 τοῦ εἰρημένου νόμου καὶ τῶν προνοιῶν τῆς διαθήκης τοῦ ἀποβιώσαντος Δημητρίου Γ. Διανέλλου ἐκ Λάρνακος, ὑπὸ ἡμερομηνίαν 5 Μαρτίου 1950 (ὑπ' ἀρ. 2 τοῦ 1950 τοῦ Ἐπαρχιακοῦ Δικαστηρίου Λάρνακος).

Καὶ ἐπειδὴ, συμφώνως πρὸς τὴν παράγραφον 10 τῆς ρηθείσης διαθήκης, ἅπαντα ἡ ἀκίνητος περιουσία τοῦ ρηθέντος Δημητρίου Γ. Διανέλλου, ἡ εὐρισκομένη ἐν Κύπρῳ, ἐκληροδοτήθη εἰς τὸ ρηθὲν Ὀρφανοτροφεῖον ὑπὸ τὸν ὅρον, μεταξὺ ἄλλων, ὅπως οἰονδήποτε ποσὸν ἐκ τῶν μετρητῶν τῶν κληροδοτηθέντων διὰ τῆς διαθήκης διατεθῆ πρὸς ἀνέγερσιν ξενοδοχείου ἄνωθεν τοῦ ἀκινήτου γνωστοῦ ὡς «Σὰν Χωλλ».

Και επειδή ή ούτω διατεθείσα περιουσία περιλαμβάνει και την εις τόν Πίνακα περιγραφομένην ακίνητον ιδιοκτησίαν, κειμένην έν Λάρνακι, ήτις λεπτομερέστερον περιγράφεται εις τό επίσημημένον σχέδιον, μονογραφηθέν υπό τών συμβαλλομένων, (έν τή παρούση συμβάσει αναφερομένην ώς «ή ακίνητος ιδιοκτησία»).

Και επειδή δέν παρέμειναν άρκετά μετρητά πρὸς Ικανοποίησιν τής θελήσεως του διαθέτου δια τήν άνέγερσιν ξενοδοχείου επί του ακινήτου «Σάν Χώλλ».

Διά ταύτα και, κατόπιν έγκρίσεως χορηγηθείσης υπό του 'Ανωτάτου Δικαστηρίου μεταξύ τής 'Ιεράς 'Αρχιεπισκοπής Κύπρου, εκπροσωπούμενης υπό τής Α.Μ. του 'Αρχιεπισκόπου Μακαρίου του Γ', (έν τοις έφεξής αναφερομένης ώς «ό Πρώτος Συμβαλλόμενος») άφ' ένός, και του Διοικητικού Συμβουλίου του 'Ορφανοτροφείου, εκπροσωπούμενου υπό τής Α.Π. του Μητροπολίτου Κιτίου 'Ανθίμου, δεόντως έξουσιοδοτηθέντος πρὸς τούτο υπό του Διοικητικού Συμβουλίου του 'Ορφανοτροφείου, (έν τοις έφεξής αναφερομένου ώς «ό Δεύτερος Συμβαλλόμενος») άφ' έτέρου, συνεφωνήθησαν τά ακόλουθα :

1. 'Ο Πρώτος και ό Δεύτερος Συμβαλλόμενος συνιστώσιν έταιρειαν υπό τήν έπωνυμίαν «Sun Hall», σκοπός τής όποίας είναι ή κατεδάφισις τών επί τής ακινήτου ιδιοκτησίας ύφισταμένων παλαιών οίκοδομών και ή άνέγερσις επί ταύτης ξενοδοχείου και καταστημάτων ή και άλλων οίκοδομών πρὸς ένοικίασιν (τά σχέδια τών όποιων θα είναι τής άμοιβαίας έγκρίσεως) και ή άπό κοινου διεξαγωγή τής ξενοδοχειακής επιχειρήσεως και έκμετάλλευσις τών άνεγερθησομένων καταστημάτων και άλλων οίκοδομών.

2. (1) 'Ο Δεύτερος Συμβαλλόμενος συνεισφέρει εις τό κεφάλαιον τής έταιρείας τήν ακίνητον ιδιοκτησίαν, ή άξία τής όποίας ώρίσθη έκ συμφώνου εις έκατόν είκοσι πέντε χιλιάδας λίρας (£125,000), ήτις θα έγγραφη έπ' όνόματι τής έταιρείας και ό Πρώτος Συμβαλλόμενος θα συνεισφέρει εις τό κεφάλαιον τής έταιρείας τό ποσόν τών έκατόν είκοσι πέντε χιλιάδων λιρών (£125,000) τοις μετρητοίς :

Νοείται ότι τά εισοδήματα τής ακινήτου ιδιοκτησίας άπό τής ήμερομηνίας τής ύπογραφής τής παρούσης συμβάσεως άχρι τής ήμέρας τής κατεδαφίσεως αύτης θα λαμβάνη και καρπούται ό Δεύτερος Συμβαλλόμενος :

Νοείται περαιτέρω ότι, άπό τής ήμέρας τής κατεδαφίσεως και μέχρι τής καταβολής ολοκλήρου του ποσού τών έκατόν είκοσι πέντε χιλιάδων λιρών (£125,000) υπό του Πρώτου Συμβαλλομένου, ούτος θα πληρώση εις τόν Δεύτερον Συμβαλλόμενον τόκον πρὸς 5% επί του μη καταβληθέντος ποσού άχρι τής ήμερομηνίας τής όλικής καταβολής τούτου.

1971  
Feb. 17

—  
THE BISHOP  
OF KITIUM  
AND OTHERS  
AS TRUSTEES  
OF THE  
DIANELLOS  
CHARITY  
(No. 1)

v.

THE ATTORNEY-  
GENERAL  
OF THE  
REPUBLIC

1971  
Feb. 17

—  
THE BISHOP  
OF KITIUM  
AND OTHERS  
AS TRUSTEES  
OF THE  
DIANELLOS  
CHARITY  
(No. 1)  
v.

THE ATTORNEY-  
GENERAL  
OF THE  
REPUBLIC

(2) Το τυχόν περαιτέρω απαιτηθσόμενον κεφάλαιον διὰ τὴν ἀνέγερσιν τοῦ ξενοδοχείου καὶ τῶν ἀνωτέρω ἀναφερομένων καταστημάτων καὶ ἄλλων οἰκοδομῶν καὶ τὴν διεξαγωγὴν τῆς ξενοδοχειακῆς ἐπιχειρήσεως θὰ συνεισφέρωσιν ἐξ ἴσου ἀπὸ καιροῦ εἰς καιρὸν ὁ Πρῶτος καὶ ὁ Δεύτερος Συμβαλλόμενος.

3. Τὰ κέρδη τῆς ἐταιρείας θὰ ἀνήκωσιν ἐξ ἴσου εἰς τὸν Πρῶτον καὶ τὸν Δεύτερον Συμβαλλόμενον καὶ αἱ ζημίαι θὰ βαρύνωσιν αὐτοὺς ἐξ ἴσου.

4. Ἡ διοίκησις τῆς ἐταιρείας θὰ διεξάγηται ἀπὸ κοινοῦ ὑπὸ τοῦ Πρῶτου καὶ Δευτέρου Συμβαλλομένου :

Νοεῖται ὅτι ἐν περιπτώσει διαφωνίας μεταξὺ τούτων ἐπὶ θέματος οὐσιωδῶς θίγοντος τὴν διοίκησιν τῆς ἐταιρείας τὸ θέμα ἐναφέρεται εἰς τὸν ἐκάστοτε ἱεραρχικῶς ἀνώτερον δικαστικὸν λειτουργὸν ἐν Κύπρῳ, ἢ ἀπόφασις τοῦ ὁποίου θὰ δεσμευῆ ἀμφοτέρους τοὺς συμβαλλομένους καὶ θὰ θεωρηταί ὡς ἀπόφασις τῆς ἐταιρείας.

5. Ἡ ἐταιρεία θὰ τηρῆ ἀκριβεῖς καὶ λεπτομερεῖς λογαριασμοὺς τῆς διαχειρίσεως αὐτῆς, οἵτινες θὰ ἐξελέγχωνται ἐτησίως ὑπὸ δεόντως προσοντούχων ἐλεγκτῶν, ὡς καὶ οἱ λογαριασμοὶ ἐταιρειῶν ἐπὶ περιορισμένη εὐθύνη (Companies) ἐπὶ τῇ βάσει τοῦ ἐκάστοτε περὶ Ἐταιρειῶν Ἐπὶ Περιορισμένη Εὐθύνη (Companies) ἰσχύοντος Νόμου.

6. Πᾶσαι αἱ διατάξεις τοῦ ἐκάστοτε ἰσχύοντος περὶ Ἀγαθοεργῶν Ἰδρυμάτων (Charities) Νόμου, αἱ ἀναφερόμεναι εἰς τὴν διοίκησιν τοῦ ἰδρύματος τὴν ὑπ' αὐτοῦ τήρησιν καὶ ἐξέλεγχσιν λογαριασμῶν ὡς καὶ τὰς ἐξουσίας ἐποπτείας καὶ ἐλέγχου τῶν κρατικῶν ἀρχῶν, εἰς τὰς ὁποίας ἀνατίθεται ἡ τοιαύτη ἐποπτεία καὶ ἔλεγχος, θὰ ἐφαρμόζωνται καὶ ἐπὶ τῆς παρούσης ἐταιρείας.

7. (1) Ἡ ἐταιρεία θὰ ἐξακολουθήσῃ νὰ ὑφίσταται μέχρις ὅτου τερματισθῇ ὑπὸ ἐνὸς ἐκ τῶν συμβαλλομένων δι' ἐγγράφου εἰδοποιήσεως, διδομένης πρὸς τὸν ἕτερον συμβαλλόμενον τοῦλάχιστον ἐξ ἡμέρας πρὸ τοῦ τοιοῦτου τερματισμοῦ :

Νοεῖται ὅτι τοιαύτη εἰδοποίησις δὲν δύναται νὰ δοθῇ πρὸ τῆς παρόδου πενήκοντα ἐτῶν.

(2) Ἐν περιπτώσει τερματισμοῦ τῆς ἐταιρείας, αὕτη ἐκκαθαρίζεται καὶ διαλύεται συμφώνως πρὸς τὰς διατάξεις τοῦ ἐκάστοτε ἐν ἰσχύϊ περὶ Ἐταιρειῶν (Partnership) Νόμου :

Νοεῖται ὅτι ἡ μερὶς τοῦ Δευτέρου Συμβαλλομένου εἰς τὴν ἐταιρικὴν περιουσίαν τῆς διαλυθείσης ἐταιρείας θὰ ὑπόκειται εἰς τὸν ἔλεγχον καὶ τὰς ὁδηγίας τοῦ Δικαστηρίου.

ΠΙΝΑΞ

1. Οικία ἐν Λάρνακι ἐξ ἑνὸς μεγάλου καφενεῖου, ἑνὸς διαδρόμου, τριῶν δωματίων, μιᾶς ἀποθήκης καὶ δύο ἀποχωρητηρίων, περιγραφομένη εἰς πιστοποιητικὸν ἐγγραφῆς ὑπ' ἀριθμὸν C 286 τῆς 10ης Αὐγούστου, 1961.

2. Μία ἀποθήκη ἐν Λάρνακι, περιγραφομένη εἰς πιστοποιητικὸν ἐγγραφῆς ὑπ' ἀριθμὸν C 276 τῆς 10ης Αὐγούστου, 1961.

3. Ἐν μαγαζι ἐν Λάρνακι, περιγραφόμενον εἰς πιστοποιητικὸν ἐγγραφῆς ὑπ' ἀριθμὸν C 277 τῆς 10ης Αὐγούστου, 1961.

4. Ἐν μαγαζι ἐν Λάρνακι, περιγραφόμενον εἰς πιστοποιητικὸν ἐγγραφῆς ὑπ' ἀριθμὸν C 278 τῆς 10ης Αὐγούστου, 1961.

5. Ἐν μαγαζι ἐν Λάρνακι, περιγραφόμενον εἰς πιστοποιητικὸν ἐγγραφῆς ὑπ' ἀριθμὸν C 279 τῆς 10ης Αὐγούστου, 1961.

6. Οικία ἐν Λάρνακι, περιγραφομένη εἰς πιστοποιητικὸν ἐγγραφῆς ὑπ' ἀριθμὸν C 280 τῆς 10ης Αὐγούστου, 1961.

7. Οικία ἐν Λάρνακι, περιγραφομένη εἰς πιστοποιητικὸν ἐγγραφῆς ὑπ' ἀριθμὸν C 281 τῆς 10ης Αὐγούστου, 1961.

8. Ἐν μαγαζι ἐν Λάρνακι, περιγραφόμενον εἰς πιστοποιητικὸν ἐγγραφῆς ὑπ' ἀριθμὸν C 282 τῆς 10ης Αὐγούστου, 1961.

9. Ἐν μαγαζι ἐν Λάρνακι, περιγραφόμενον εἰς πιστοποιητικὸν ἐγγραφῆς ὑπ' ἀριθμὸν C 283 τῆς 10ης Αὐγούστου, 1961.

10. Ἐν μαγαζι καὶ μία μικρὰ ἀποθήκη ἐν Λάρνακι, περιγραφομένη εἰς πιστοποιητικὸν ἐγγραφῆς ὑπ' ἀριθμὸν C 284 τῆς 10ης Αὐγούστου, 1961.

11. Ἐν μαγαζι καὶ μπουφέ ἐν Λάρνακι, περιγραφόμενα εἰς πιστοποιητικὸν ἐγγραφῆς ὑπ' ἀριθμὸν C 287 τῆς 10ης Αὐγούστου, 1961.

12. Ἐν μαγαζι ἐν Λάρνακι, περιγραφόμενον εἰς πιστοποιητικὸν ἐγγραφῆς ὑπ' ἀριθμὸν C 288 τῆς 10ης Αὐγούστου, 1961.

13. Ἐν μαγαζι ἐν Λάρνακι, περιγραφόμενον εἰς πιστοποιητικὸν ἐγγραφῆς ὑπ' ἀριθμὸν C 289 τῆς 10ης Αὐγούστου, 1961.

Ἐν Λευκωσίᾳ, τῇ 1ῃ Νοεμβρίου, 1967.»

1971

Feb. 17

—  
THE BISHOP  
OF KITIUM  
AND OTHERS  
AS TRUSTEES

OF THE  
DIANELLOS  
CHARITY  
(No. 1)

v.

THE ATTORNEY-  
GENERAL  
OF THE  
REPUBLIC