negligent, the defendant 80% negligent and the parent 5% negligent. Unfortunately for the defendant, the matter of the parent's negligence was not properly pleaded and the court had to deliver judgment for full damage against the defendant.

Similarly in **Oliver v. Birmingham Omnibus** (10) the defendant was found guilty of negligence and the plaintiff's grandfather found guilty of contributory negligence. Again the matter of the contributory negligence was not properly pleaded and the plaintiff was awarded full damages against the defendant.

It is submitted that these cases indicate that the question of the contributory negligence of a parent can be properly brought before the court and that such claims will in all probability be favourably received. In this modern age of haste and hurry, John Public should not have to be confronted with swarms of negligent and unattended infants darting hither and yon over highways and byways to the utter disregard of the rights of others. Especially is this so where the very media which carries them to their destination is conveniently provided by the infants' parents. Bearing in mind the comments of Alderson B. and Mathers CJKB it would be well for parents to make stricter supervision over the actions of their children or stand the possibility of being held liable for injuries sustained by them.

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(10) Supra (6).
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BADDELEY v. INLAND REVENUE COMMISSIONERS (1953) 1 A.E.R. 63.

Trust – Charity – Moral, Social and Physical Training and Recreation – Whether For Relief of Poverty or Beneficial to the Community – Whether Religious Nexus Between Individuals Constitutes Them a Section of the Public.

This case raises several problems in the well-ploughed field of charitable trusts, including the question of trusts for the relief of poverty, for recreational facilities and a consideration of whether a class of people, determined by their affiliation with a particular religious group, is a part of the community for the purpose of a trust beneficial to the community.

Two conveyances, both dated the same day, transferred several pieces of land to trustees who were directed to allow the property in each case "to be appropriated and used by the leaders for the time being of the Stratford Newton Methodist Mission under the name of the 'Newton Trust' " for certain purposes, inter alia, for the moral, social and physical training and recreation of persons resident in the county boroughs of West Ham and Leyton in the county of Essex who were members of the Methodist Church or were likely to become members of that church and lacked the means otherwise to enjoy the

advantages provided by the trusts, and for the promotion and encouragement of all forms of such activities as were calculated to contribute to the health and well-being of such persons. It was contended by the trustees (taxpayers) that the conveyances were exempt from the doubled stamp duty imposed by s. 52(1) of the Finance Act, 1947, since the trust was established for charitable purposes only and accordingly came under s. 54(1) of that Act.

In support of their claim the trustees invoked two of the four classifications of charitable trusts delineated by Lord Macnaghten in **Income Tax Commissioners v. Pemsel,** (1) namely, trusts for the relief of poverty and trusts for other purposes beneficial to the community. Mr. Justice Harman, who heard the case, disposed shortly of the ground of relief of poverty:

> " 'Relief' seems to connote need of some sort, either need of a home or of the means to provide for some necessity or quasi-necessity and not merely for an amusement, however healthy it is."

Among the conceivable objects of the trusts in the present case were activities which well could be termed amusements. In passing, the learned judge points out that to have a trust for the relief of poverty which is also a charitable trust, the poverty does not have to be a state of "absolute want or grinding need."

The trustees' view that the trusts were for the benefit of the community also failed. On this ground, the learned judge followed the decision in **Londonderry Presbyterian Church House Trustees v. Inland Revenue Commissioners** (2), a judgment of the Court of Appeal of Northern Ireland, and held that the recreative provisions in the instant case did not constitute a charitable trust.

Mr. Justice Harman's judgment contains an interesting dictum; it concerns the point whether a class of persons ascertained by reference to their connection with a particular religious denomination can be regarded as a section of the community within the fourth category of **Pemsel's** case (supra). The learned judge states that had he held recreation to be appropriate subject-matter for a charitable trust, the question would still remain for determination whether the object was a public one; that is, one that would benefit the community or a class of the community. The individuals which the trust in this case had in view had to be inhabitants of two boroughs in the country of Essex, persons of insufficient means, and either Methodists or likely to become Methodists. In the learned judge's opinion, these individuals would form a section of the community, so that had he held recreation to be a charitable object, he would have held the purpose here to be a public recreation. This was the view expressed by two of the three members of the Court of Appeal in the **Londonderry** case (supra).

(1) 1891) A.C. 531 at 583.
(2) (1946) N.I. 178.

The conclusions on this matter, however, are not all one way. In **Re Hobourn Aero Components Ltd.'s Air Raid Distress Fund** (3), the Court of Appeal held that although the fund in that particular case was for the relief of air-raid distress, its purposes were of a personal, and not of a public character, because it was merely for the benefit of the employees of a particular company who were themselves, for the main part, the subscribers to the fund, and, moreover, the benefits were confined to such of the employees as had subscribed to the fund. In **Opponheim v. Tobacco Securities Trust Co., Ltd.** (4), by a settlement trustees were directed to apply certain income "in providing for ... the education of children of employees or former employees" of a British limited company or any of its subsidiary or allied companies. The employees so indicated numbered over 110,000. The House of Lords held, Lord MacDermott dissenting, that the common employment of the beneficiaries would not be a quality which constituted them a section of the community so as to afford to the trust the necessary public character to render it charitable, so the gift was void for perpetuity. The Ontario Court of Appeal in **Re Cox** (5), considered the following gifts: "To pay the income thereof in perpetuity for charitable purposes only; the persons to benefit directly in pursuance of such charitable purposes are to be only such as shall be or shall have been employees of The Canada Life Assurance Company and/or the dependents of such employees ..." It was held that the gift was not a valid charitable gift for it was not for the benefit of the public or an appreciably important section of the public.

Although the designated groups in these last three cases were not religious denominations, the decisions illustrate that the problem whether certain individuals form a class of the community is one shared by all the types of purportedly charitable trusts(with the possible exception of the anomalous "poor relations" cases). To determine the public character of the gift, the test is not the nature of the gift; that is, whether it be for the relief of poverty, or for the advancement of education, or for the advancement of religion; it is, rather, the description of the beneficiaries. The words of Lord Greene, M.R. in **Re Compton** (6) appear in point:

> "No definition of what is meant by a section of the public has, so far as I am aware, been laid down, and I certainly do not propose to be the first to make the attempt to define it."

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(3) (1940) 1 A.E.R. 501.
(4) (1951) A.C. 297.
(5) (1951) 2 D.L.R. 326.
(6) (1947) 1 Ch. 123 at 129.