

RE: CLAPHAM COLLEGE BUILDING  
FUND

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O P I N I O N

1. I think that a conference will be desirable in particular to clarify the purposes for which the fund was raised. The reference in Mr. Kachel's letter quoted in my instructions to "the Education Act 1945" is clearly an error: but he may have meant either the 1944 or the 1946 Act. However it is in my opinion reasonably clear that the fund was raised by the Xaverian Brothers in order to subvent such expenditure on building by way of extension or reconstruction of Clapham College as they might have to incur in consequence of the Acts I have mentioned or one of them.

2. The purpose of the fund was in my opinion charitable: and it was a purpose which did not fail at the outset. My preliminary view is that it failed subsequently when the Xaverian Brothers ceased to carry on a school at Clapham College; and thereupon the fund in my opinion became applicable cy-pres, because it appears to be evident that all the donors made their donations on the footing that they were parting for good with the moneys which they donated. Reference may be made to Re Wokingham Fire Brigade (1951) Cl. 373.

3. Where as here, there is no contemporary document

declaring the trusts for which the fund is raised it must in my view be a matter of doubt what the trusts are and consequently a matter of doubt whether and how the fund is applicable cy-pres. The first doubt can only be resolved by the Court. I cannot advise that the Xaverian Brothers could safely and properly apply the fund for their general educational purposes on the strength of the opinion I have expressed above, if for no other reason than that such an application would be a cy-pres application. That the Diocesan Trustees would not oppose such an application does not resolve the matter.

4. On my present information I think that the proper course is for the trustees of the fund to apply by originating summons in the Chancery Division for determination of the question (putting it broadly) whether the fund is now applicable cy-pres, and for a scheme. The defendants would be a donor (to represent all the donors), the Diocesan Trustees, and the Attorney-General.

5. Before settling any proceedings I would require such further information as is available: and that can most conveniently be considered at a conference at which Mr. Quinn should be present. It would be desirable that he should have with him such papers and documents as he considers might in any way be relevant

*J. A. B. Finlay*

Lincoln's Inn

12 November, 1971.