IN THE SUPREME COURT OF JUDICATURE
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
(MR D OLIVER QC)

CHANI 97/0581/B

Royal Courts of Justice
Strand
London WC2

Wednesday, 30 July 1997

B e f o r e:

LORD JUSTICE LEGGATT
LORD JUSTICE MORRITT
LORD JUSTICE MUMMERY

- - - - - -

GAUDIYA MISSION & ORS
PLAINTIFFS/RESPONDENTS

- v -

BRAHMACHARY & ORS
SIXTH DEFENDANT/APPELLANT

- - - - - -

(Computer Aided Transcript of the Palantype Notes of
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MR W HENDERSON (Instructed by the Treasury Solicitors, London SW1H 9JS) appeared on behalf of the Appellant

MR P YAJNIK (Instructed by Messrs Markand & CO, E7 8LJ) appeared on behalf of the Respondent

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J U D G M E N T
(As approved by the Court)

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Wednesday, 30 July 1997

JUDGMENT

LORD JUSTICE MUMMERY: The issue in this appeal is whether the first plaintiff, the Gaudiya Mission, is a "charity" within the meaning of the Charities Act 1993 ("the 1993 Act"). If it is, these are "charity proceedings" within the meaning of the 1993 Act and they require the leave of the Charity Commission or the Court to be taken or continued. It would also be proper to join HM Attorney-General as a defendant to the proceedings.

Mr David Oliver QC (sitting as a Deputy Judge of the High Court) held that the Mission was a charity and made the following Order on 14 March 1997:

"1. Her Majesty's Attorney-General be added as a Defendant to these proceedings

2. The Plaintiffs do forthwith lodge a statement containing the information required by Rule 3(3) of Order 108 of the Rules of the Supreme Court

...

5. The Plaintiffs do have leave pursuant to Section 33(5) of the Charities Act 1993 to take and continue these proceedings."

The Attorney-General was granted leave to appeal from that Order. By his Notice of Appeal dated 23 April 1997, the Attorney-General seeks an order that he ceases to be a party to these proceedings, and that it be declared that leave is not required for the taking or continuing of them.

Mr William Henderson, counsel for the Attorney-General, submitted that the Mission was not a "charity" within the 1993 Act, because it is established in Calcutta and not in England and

Wales, and is not subject to the control of the High Court in exercise of its jurisdiction with respect to charities.

Mr Yajnik, counsel for the first defendant, contends that, as a result of its activities in England, the Mission is established here and that it is subject to the Court's control. He contends that the judgment below was correct and that the appeal should be dismissed. We are grateful to both counsel for their concise, helpful arguments. The other defendants have taken no part in the appeal.

The background to this dispute may be summarised as follows. The Mission maintains preaching centres and temples known as "Maths":

> "... To spread the doctrines and philosophy enunciated in the Vaishnava Faith as preached and propounded by Lord Sri Chaitanya Mahaprabhu for the uplift, development and fulfilment of mankind at large through the preaching of the doctrines with -
>
> (a) Spread of education,
>
> (b) Medical Relief,
>
> (c) Relief of the poor and
>
> (d) Advancement of any other objects of general public utility not involving the carrying on of any activity for profit."

There are centres for those purposes throughout India. There is also such a centre at 27 Cranhurst Road, Cricklewood, NW2 ("the London Temple").

The Mission has a president, who is the second plaintiff, and a secretary, who is the third plaintiff. The Mission itself, joined in these proceedings as first plaintiff, claims that under the law of India it is a corporate body separate from its members. This is not challenged so far in

these proceedings. It is registered in Calcutta as from 26 March 1940 under the Societies Registration Act 1860. It enjoys charitable status in India. It is not registered as a charity in England or Wales, but this case has so far proceeded on the basis that its objects are such that it would be entitled to charitable status for those objects in this country. We have heard this appeal on that basis, but we have heard no argument and make no decision on whether the assumption which has been made is legally correct.

The first defendant is the priest in charge of the London Temple. These proceedings are part of a long-running battle, which is also being litigated in the Courts in India, between rival factions within the Mission struggling for control of it.

By a Deed dated 1 July 1996, a Declaration of Trust was made by three trustees in London to establish a charitable trust, under the name Gaudiya Mission Society Trust, for the advancement of religion in accordance with the tenets of the Hindu Vaishnava Faith.

This case is not concerned with that Trust, though its existence has been noted in these proceedings, and has featured to some extent in the arguments. It is a registered charity. Three of the defendants are sued as present trustees of that Trust. It is claimed within these proceedings by the plaintiff Mission that assets held by the Gaudiya Mission Society Trust are in fact assets to which the plaintiff Mission is entitled. It is also claimed that the Gaudiya Mission Society Trust is passing itself off as and for the plaintiff Mission.

It is claimed in this action, begun by a writ issued on 23 October 1996, that a declaration should be granted that the London Temple, its premises, and all monies and funds donated, raised and acquired on its behalf, are the property of the plaintiff Mission, and are subject to directions given by the plaintiffs. Injunctions are sought restraining the defendants from

conducting the affairs of the London Temple, and using those premises otherwise than in accordance with directions given by the plaintiffs and from withdrawing or dealing with money in the Mission's bank accounts. Consequential orders for accounts and inquiries are sought.

On a motion for interim relief, Robert Walker J granted a temporary injunction on 7 November 1997 over the hearing of the motion by order. That motion came before Mr David Oliver QC on 14 January 1997, along with a further motion issued on 9 January 1997, seeking additional interlocutory injunctions. Judgment was given on 20 February on the basis of certain undertakings offered by the first defendant. But the motion was adjourned to enable the consent of the Charity Commissioners to be sought. This step was taken because it had been submitted by the first defendant's counsel that the Court had no jurisdiction to entertain these proceedings, or the application for relief, as the consent of the Charity Commissioners was required under section 33 of the 1993 Act, and had not been obtained.

At the adjourned hearing on 7 March, counsel for the Attorney-General submitted that the Mission was not a "charity" within the meaning of section 33(2) of the 1993 Act, and that, though the Commissioners were willing to give their consent if it was necessary, it was not in law necessary.

Before turning to the decision of the Judge and the arguments on this appeal, it is necessary to refer to the relevant provisions of the 1993 Act. Section 33 deals with proceedings and provides:

> "(1) Charity proceedings may be taken with reference to a charity either by the charity, or by any of the charity trustees, or by any person interested in the charity, or by any two or more inhabitants of the area of the charity if it is a local charity, but not by any other person.

(2) Subject to the following provisions of this section, no charity proceedings relating to a charity (other than an exempt charity) shall be entertained or proceeded with in any court unless the taking of the proceedings is authorised by order of the Commissioners.

...

(5) Where the foregoing provisions of this section require the taking of charity proceedings to be authorised by an order of the Commissioners, the proceedings may nevertheless be entertained or proceeded with if, after the order had been applied for and refused, leave to take the proceedings was obtained from one of the judges of the High Court attached to the Chancery Division.

...

(8) In this section 'charity proceedings' means proceedings in any court in England or Wales brought under the court's jurisdiction with respect to charities, or brought under the court's jurisdiction with respect to trusts in relation to the administration of a trust for charitable purposes."

Section 96(1) contains provisions for the construction of references to a "charity" in the Act.

The relevant parts can be extracted as follows:

"(1) In this Act, except in so far as the context otherwise requires -

'charity' means any institution, corporate or not, which is established for charitable purposes and is subject to the control of the High Court in the exercise of the court's jurisdiction with respect to charities..."

Section 97 contains general interpretation provisions:

"(1) In this Act, except in so far as the context otherwise requires -

'charitable purposes' means purposes which are exclusively charitable according to the law of England and Wales;

...

'the court' means the High Court and, within the limits of its jurisdiction, any other court in England and Wales having a jurisdiction in respect of charities concurrent (within any limit of area or amount) with that of the High Court, and includes any judge or officer of the court exercising the jurisdiction of the court;

...

'institution' includes any trust or undertaking;

...

'trusts' in relation to a charity, means the provisions establishing it as a charity and regulating its purposes and administration, whether those provisions take effect by way of trust or not, and in relation to other institutions has a corresponding meaning."

Finally, section 100 provides:

"(2) Subject to subsection (3) to (6) below, this Act extends only to England and Wales.

(3) Section 10 [of the Act] and this section extend to the whole of the United Kingdom.

(4) Section 15(2) extends also to Northern Ireland."

The deputy judge, who did not have the benefit of the extensive citation of authorities in this Court, held that the Mission is a charity for the purposes of section 33(2) of the 1993 Act, at least so far as its activities and property in the jurisdiction are concerned, and that the proceedings are "charity proceedings" within the meaning of section 33(8) of the 1993 Act. It followed, in his view, that the Attorney-General should be joined as a defendant and that leave should be granted to bring and continue the proceedings.

In brief, the reasons for his decision were these: the proceedings relate to the conduct in the jurisdiction of certain aspects of the affairs of the London Math; the property of the Mission is vested in a governing body as trustees for the benefit of the Mission; the proceedings are charity proceedings within section 33(8), because they are proceedings brought under the Court's jurisdiction in respect of trusts in relation to the administration of a trust for charitable purposes.

He held that they are charity proceedings "relating to a charity" within section 33(2) and section 96(1) and 97(1). The issue he identified is whether the Mission is an institution established for chartable purposes, and is subject to the control of the High Court in the exercise of the Court's jurisdiction in respect to charities. He said that the Mission was established under foreign law, but it was conducting activities and had assets within the jurisdiction pursuant to its objects, which English law would accept as charitable.

After considering a number of authorities, which he described as "sparse and, in the main, unhelpful", he said that he could see "no reason in principle why the existence of the jurisdiction to exercise such functions should be excluded", and concluded that there was no territorial limitation on the jurisdiction as to charities.

He considered that he was reinforced in this view by three matters: first, if the jurisdiction were excluded, those who wished to be a charity could avoid the jurisdiction and would establish their charitable foundations in some less assiduous foreign jurisdiction and conduct all or part of its operations there. Secondly, the court had jurisdiction over the activities of the members of the Mission, who had broken away and formed a chartable trust (the Gaudiya Mission Society Trust mentioned earlier) with similar objects to the Mission. It was registered pursuant to section 3 of the 1993 Act.

Thirdly, and finally, he was of the view that the dissenting judgment of Russell LJ in Construction Industry Training Board v. Attorney-General [1973] 1 Ch 173, pointed against a territorial limitation of the jurisdiction of the Court with respect to charities.

The key question on this appeal is whether the Mission is an institution established for charitable purposes and "subject to the control of the High Court in the exercise of the Court's jurisdiction

with respect to charities". If it is not, the Mission falls outside the definition of a "charity" for the purposes of the 1993 Act; and these are not proceedings "relating to a charity" which either require the authorisation of the Charity Commissioners or justify the addition of the Attorney-General, the constitutional protector of charity, as a necessary or proper party.

In my judgment, the order of 14 March 1997 is contrary to the correct construction of the 1993 Act, is incompatible with well-established principles and practice of charity law, and is inconsistent with specific authority binding on this court and the court below.

My reasons for this conclusion are these.

A. The 1993 Act

The 1993 Act is a consolidating Act extending only to England and Wales, with minor exceptions. It contains many detailed provisions for the registration, regulation and administration of charities, as defined by the Act. A charity does not have to take any particular legal form; it may be a trust or an undertaking; it may be incorporated or unincorporated. But it must satisfy both requirements of the definition in section 97(1). It must be "established for charitable purposes". It will be noted that "charitable purposes" is a defined term, meaning "those purposes which are exclusively charitable according to the law of England and Wales"; and it must be "subject to the control of the High Court in the exercise of the Court's jurisdiction with respect to charities".

It is neither expressly enacted nor is it plainly implied that the 1993 Act applies to institutions other than those established for charitable purposes in England and Wales, (ie under and in accordance with the law of England and Wales). On the contrary, a fair reading of the scheme of the 1993 Act, having regard to the principle of implied territoriality of legislation and

practical considerations of enforceability, leads to the conclusion that the 1993 Act is neither intended, nor apt, to apply to an institution established for charitable purposes outside England and Wales (ie an institution constituted in accordance with the law of a foreign state). Such institutions are not "within the legislative grasp or intendment of the statute": Clark v. Oceanic Contractors Inc [1987] 2 AC 130 at 152C, per Lord Wilberforce.

This conclusion is borne out by a survey of the detailed provisions of the 100 sections of the Act, many of them using the defined term "charity". I refer to a few for the purposes of illustration; for example, the function of the Charity Commissioners in promoting and making effective the work of a charity in meeting the needs designated by its trusts (section 1(4)); the duty of the Commissioners to keep a register of charities (section 3); the power to institute inquiries (section 8); and to make schemes (sections 13 and 16); to act for the protection of a charity (section 18); to appoint a receiver and manager (section 19); to authorise dealings (section 24); and to give leave in cases of restrictions on dealings (section 36).

The provisions relating to the keeping of accounts, the making of annual statements, and to the provision of annual reports and other provisions for the winding up of the charity and for the qualification of charity trustees, are all appropriate to an institution established in England and Wales in accordance with English law and subject to the control of the High Court's charity jurisdiction. They are not appropriate to bodies or institutions established outside England and Wales in accordance with other systems of law.

B. Principles and Practice

Under English law charity has always received special treatment. It often takes the form of a trust; but it is a public trust for the promotion of purposes beneficial to the community, not a trust for private individuals. It is therefore subject to special rules governing registration,

administration, taxation and duration. Although not a state institution, a charity is subject to the constitutional protection of the Crown as parens patriae, acting through HM Attorney-General, to the state supervision of the Charity Commissioners and to the judicial supervision of this Court. This regime applies whether the charity takes the form of a trust or of an incorporated body.

The English courts have never sought to subject to this regime institutions or undertakings established for public purposes under other legal systems. I refer to the commentary to Rule 153, Dicey & Morris on the Conflict of Laws (12th Edition) Vol 2, page 1096. The rule is stated in these terms on page 1088:

> "The validity, construction, effects and administration of a trust are governed by the law chosen by the settlor or, in the absence of any such choice, by the law with which the trust is most closely connected."

In the commentary at page 1096, the editors correctly state:

> "The English courts will not administer a foreign charity under the supervision of the court, nor will they settle a scheme for such a charity. It is clear that the court cannot effectively control trustees who will probably have to hold property outside England, and, if it appointed trustees for a charity both within and without England, the English trustees would have difficulty in controlling their co-trustees. In these circumstances the court, in the case of a charitable bequest for foreign beneficiaries, will consider whether the purpose is one which can legally be carried out in the foreign country concerned and, if so, will order payment to the trustees appointed. It will not normally settle a scheme for the administration of such a charity, though it may authorise application to a suitable foreign court to frame such a scheme. On the other hand, if the foreign objects of an English charitable trust fail, the court may direct an application of the trust funds cy-près."

Many cases are cited in the footnotes in support of that passage. The important point is that the special charitable jurisdiction of the High Court to make a scheme is not exercised, or even

regarded as exercisable, in a case of a charity which has been established, or which it is intended to establish, under a foreign legal system. In such a case, the foreign charity and those engaged in the administration of it, are beyond the control of the court.

A few illustrations from the cases decided over the last 200 years bear out the correctness of the statement in Dicey & Morris. In the earliest of these cases, Provost of Edinburgh v. Aubery (1754) Amb 236, Lord Hardwicke declined to give directions for the distribution of a fund of £3,500 bequeathed by the testator to the Provost of Edinburgh to be applied for the maintenance of poor labourers residing in Edinburgh and towns adjacent. He said that that belonged "to another jurisdiction, that is, to some of the courts in Scotland". He ordered the fund to be transferred to such person as the Provost of Edinburgh should appoint.

This was followed by Lord Eldon L-C in Attorney-General v. Lepine (1818) 2 Swanst. 181. The testator left part of his residuary estate for the benefit of a school for the poor in the parish of Dollar. Lord Eldon said:

> "I have always understood that, where a charity is to be administered in Scotland, this Court should not take into its own hands the administration."

He directed that the money should be paid to trustees and administered under the supervision of the Scottish courts. Decisions to similar effect may be found in Emery v. Hill (1826) 1 Russ. 112, a bequest to the treasurer of a society established in Scotland for the propagation of Christian knowledge; Forbes v. Forbes (1854) 18 Beav. 552, a case of a gift to build a bridge over the River Don in Scotland; and Re Marr's Will Trusts [1936] Ch 671 at 675.

The practice established so long ago has been followed in modern times. In Re Robinson [1931] 2 Ch 122 (a gift to the German government for the benefit of disabled German soldiers) Maugham J said (at page 129):

> "... if the trustee is abroad there is no power in the Court to direct a scheme to be settled, and the practice in such a case is to hand over the fund to the trustee to be applied according to the trusts of the will without directing a scheme."

These cases show that the courts of this country accept that they do not have the means of controlling an institution established in another country, and administered by trustees there. This was recognised as the reason why courts have no authority to make a scheme: see Attorney-General v. Sturge (1854) 19 Beav 597, a decision of Sir John Romilly MR (where a gift had been made to a school established by the testatrix in Genoa).

The practical problems were most forcefully stated by Lord Brougham in Mayor of Lyon v. East India Co (1836) 1 Moore's PC 175 at 297, in a passage which merits quotation. Lord Brougham said:

> "The objection, in the ordinary case, to administering a foreign charity under the superintendence of the Court, is this: those who are engaged in the actual execution of it, are beyond the Court's control, and those who are within the jurisdiction are answerable to the Court for the acts of persons as to whom they can derive no aid from the Court. Such an office will not easily be undertaken by any one; and its duties cannot be satisfactorily performed; at least the party must rely more on the local, that is, the foreign, authorities for help, than on the Court to which he is accountable."

These cases are to be contrasted with other cases in which a charity, sometimes misdescribed as a "foreign charity", has been held to be subject to the control of the High Court and to its scheme-making powers. In the case of Re Colonial Bishoprics Fund 1841 [1935] Ch 148, Luxmoore J rejected the contention that he had no jurisdiction to make a cy-près scheme

because it was a "foreign charity", in the sense that all its objects were located abroad. That was a trust established in England for the endowment of Bishoprics in the Colonies. Luxmoore J accepted the submission of counsel for the Attorney-General, Mr Danckwerts, that, as the trustees of the fund were in this country and the trusts were established here, he could direct the scheme, even though the objects of bounty were located abroad.

Attorney-General v. City of London (1790) Bro.CC 171 (one of the cases cited by the judge) is an early example of the exercise of that jurisdiction. The case arose out of the American War of Independence. A trust had been established here for the advancement of Christianity among "infidels in America". Acting on information that there were no longer any infidels within the areas designated, and that the charity was lacking in objects, and also acting on information that the College of William and Mary, which had acted in the local administration of the charity, was now "subject to a foreign power" (the independent States of America), Lord Thurlow L-C directed a new scheme to be made for the administration of the charity. That is an example of a scheme made in relation to an English charity, with overseas objects, not in relation to a foreign charity.

These cases establish that the power of the court to direct schemes, one of the most distinctive powers of the court with respect to charities, can only be exercised in relation to a charity established in, and in accordance with the law of, England and Wales. It would be contrary principle and to the practice of this Court to hold that the Mission was a charity.

In an area which calls for comity, it is reassuring to note that both the Court of Session in Neech's Executors [1947] SC 119, and the High Court of New Zealand in Re Joseph [1907] 26 NZLR 504, decided that, in dealing with a bequest for charitable purposes to be established or

carried out by scheme in England and Wales, it was for the Chancery Division of the High Court in England to make the scheme, not for the Court of Session or the New Zealand High Court.

C. Specific Authority

There is specific authority, both of the Court of Appeal and of the House of Lords, in Camille and Henry Dreyfus Foundation Inc v. Inland Revenue Commissioners [1954] 1 Ch 672, for the proposition that the term "charity" does not include an institution established under the laws of another legal system.

That was a case of a foreign corporation constituted according to the laws of the state of New York for objects exclusively charitable according to the law of the United Kingdom. At page 683, Lord Evershed MR said:

> "To my mind, the words 'charities' or 'charitable institutions' in an ordinary context in an English Act of Parliament or any English document must (prima facie at least) mean institutions regulated by, and subject to the jurisdiction of, the laws or the courts of the United Kingdom and constituted for the carrying out of objects or purposes which, in the courts of the United Kingdom and nowhere else, would be held to be 'charitable'. In my judgment the two aspects or characteristics are almost inseparable. The law relating to charities or charitable trusts is a peculiar and highly complex part of our legal system. An Act of Parliament which uses the words 'charity' or 'charitable' must be intending to refer to that special and characteristic, if not in some respects artificial, part of our law."

At page 685, Lord Evershed said:

> "I am considering what, as a matter of ordinary language and common sense, is intended (in the absence of a special context) by the phrase, in an English Act of Parliament or other document, 'body of persons established for charitable purposes only.' In my judgment, applying the test I have formulated, once it is conceded that 'for charitable purposes only' means 'for purposes which are what the laws of the United Kingdom define as charitable and hold to fall within the special and somewhat artificial significance of that word,' then it seems to me, prima facie, that a body cannot be 'established' for such purposes, unless it is so

constituted or regulated as to be subject to the jurisdiction of the courts which can alone define and regulate those purposes."

Jenkins LJ was of the same opinion. At page 707 he said:

"I have already expressed the view that 'trust' in an Act of the United Kingdom Parliament means a trust taking effect and enforceable under the law of the United Kingdom. It follows that, in my opinion, a 'trust established for charitable purposes only', must here mean a trust taking effect and enforceable under the law of the United Kingdom and creating an obligation enforceable in the courts of the United Kingdom to apply its funds for the purposes which are, according to the law of the United Kingdom, exclusively charitable. I can attribute no different meaning to the phrase 'established for charitable purposes only' when applied to a body of persons. So applied, I think it is only satisfied by a body of persons which is under the law of the United Kingdom subject to an obligation enforceable in our courts to apply its funds for purposes which are according to that law exclusively charitable. Accordingly, I would hold that the foundation is not 'established for charitable purposes only' within the meaning of section 37(1)(b) of the Income Tax Act 1918."

Hodson LJ expressed the same view at page 712.

The case went to the House of Lords. The case is reported at [1956] AC 39. At page 46, Lord Morton of Henryton said:

"It is at once apparent that the phrase in section 37(1)(b) 'any body of persons or trust established for charitable purposes only' is not expressly limited to bodies of persons or trusts established in the United Kingdom, but the Court of Appeal held that it should be construed as being so limited. This conclusion was based entirely upon a consideration of the true construction of the Act of 1918 ... I agree with the conclusion reached by the Court of Appeal, and as no question of principle arises in this case, and my reasons are in substance the same as those appearing in the judgments of that court, I shall not detain your Lordships by setting them out in my own words."

At page 47, Lord Normand added a pertinent observation in relation to the role of the Attorney-General. He said:

> "... it is clearly the English system that he has in mind, [referring to the judgment of Lord Evershed] for it goes without saying that the Attorney-General has no right to invoke the powers of the courts beyond the boundary of England..."

The only authority drawn to our attention which may be thought to be contrary to Camille and Dreyfus, is Re Duncan (1867) 2 LR Ch App 356. It was not cited in the Camille and Dreyfus case, and, if it is inconsistent with it, should be regarded as wrong on the obiter dicta expressed in it. The question in Re Duncan was whether the consent of the Charity Commissioners was necessary to petition the Court to appoint a new trustee of a charity established in England to promote Christian education in Jamaica. "Charity" was defined in the Charitable Trusts Act 1853 as "every endowed foundation and institution taking or to take effect in England and Wales and coming within the meaning, purview and interpretation of the statute of 43 Eliz c.4, or as to which, or the administration of the revenues or property whereof, the Court of Chancery has or may exercise jurisdiction".

The Court of Appeal in Duncan had no difficulty in concluding that the authority of the Charity Commissioners extended to charities which were founded and endowed in England or Wales, even though the revenues were applied to benefit those abroad. It was not necessary for the court to decide whether the Charity Commissioner's powers extended to charities founded and endowed abroad who applied their revenues in England and Wales. Turner LJ and Lord Cairns LJ expressed the view, obiter, that it might well be said that the institution, even though located abroad, takes effect here if it applies its property here. I refer to page 360 in the judgment of Turner LJ and to page 362 in the judgment of Lord Cairns LJ where he said:

> "... I see no reason to doubt that, as a general rule, where there is the application and expenditure of money in England under a charitable endowment, there also the jurisdiction of the Charity Commissioners attaches, to the extent, at all events, of

> that application and expenditure, even though the constitution of the charity, or the corpus of the property, should be abroad."

In my judgment, if those obiter dicta are inconsistent with the decision of the Court of Appeal, as affirmed by the House of Lords in Camille and Dreyfus, they do not represent the correct state of present law. I would add that the dissenting judgment of Russell LJ in Construction Industry Training Board v. AG [1993] Ch 173 supports the decision in Camille v. Dreyfus on jurisdiction: see page 180E.

For all those reasons I conclude that the Mission is not a charity within the meaning of the 1993 Act, that leave is not necessary for these proceedings, and that the Attorney-General is not a necessary or proper party to them. I would allow the appeal, and make the order sought in the Notice of Appeal. I add three final observations to clarify the effect of this judgment.

1. It has been assumed so far in these proceedings that the purposes of the Mission are exclusively charitable under English law. We are not required on this appeal to decide whether or not that assumption is legally correct.

2. This appeal has only been concerned with the construction of the expression "charity proceedings" in section 33 of the 1993 Act, and the limited issue whether leave is required for them to be taken or continued. Nothing in this judgment is intended to restrict the constitutional role of the Attorney-General as protector of charity. There may be cases in which it would be proper for the Attorney-General to be joined as a party to proceedings involving a foreign charity. This is not such a case.

3. The success of the Attorney-General on this appeal would not prevent the plaintiffs from pursuing these proceedings without the leave of the Charity Commissioners or the Court and in

the absence of the Attorney-General as a party. I express no view on jurisdictional or procedural objections which might be taken to these proceedings.

For all those reasons I would allow the appeal.

LORD JUSTICE MORRITT: I agree.

LORD JUSTICE LEGGATT: Until this case, I never saw on appeal a judgment of which 60 per cent consisted of citations from earlier authorities or from statute. It is not a practice to be commended or recommended. It has diverted the Deputy Judge's attention from an independent consideration of the principles to be applied. His attention has focused instead upon such points of similarity as may exist between the cases cited and the present case. In the result, he has paid insufficient regard to the consequences of his order for this and other foreign charities.

Charities provide a prime example of institutions which it is in the English public interest to regulate and control. But that is only so if they are English charities. Any attempt to control foreign charities would represent something akin to encroachment upon the sovereignty of a foreign state. I am quite satisfied that because, for the reasons given by my brother Mummery, the Gaudiya Mission is not established in England for charitable purposes and is not subject to the control of the High Court in the exercise of its jurisdiction in respect to charities, it is not a charity within section 33 of the Act of 1993. Neither the leave of the Charity Commissioners or the Court, nor the joinder of the Attorney-General is required.

The appeal is allowed and the Deputy Judge's order is set aside. We order that the Attorney-General do cease to be a party to these proceedings and we declare that the plaintiffs did not need leave to take and do not need leave to continue these proceedings.

ORDER: Appeal allowed, no order as to costs, save for the first defendant to pay the Attorney-General's costs below, not to be enforced without the leave of the court; legal aid taxation of the respondent's costs.