HIGH COURT OF JUSTICE (CHANCERY DIVISION)—18TH FEBRUARY, 1954

COURT OF APPEAL—10TH, 11TH, 12TH AND 13TH MAY, AND 3RD JUNE, 1954

HOUSE OF LORDS—5TH, 6TH AND 28TH JULY, 1955

The Camille and Henry Dreyfus Foundation, Inc.

v.

Commissioners of Inland Revenue[1]

Income Tax—Exemption—Body of persons established for charitable purposes—Established outside United Kingdom—Income Tax Act, 1918 (8 & 9 *Geo.* V, *c.* 40), *Section* 37 (1) (*b*).

The Appellant Foundation was incorporated under the Membership Corporations Law of the State of New York, U.S.A., and all its directors were American citizens resident in the U.S.A. Its primary purpose was "to advance the science of chemistry, chemical engineering and related sciences as a means of improving human relations and circumstances throughout the world". The Foundation was entitled to royalties payable by a company resident in the United Kingdom.

The Foundation claimed exemption from Income Tax under Section 37 *of the Income Tax Act,* 1918, *in respect of the royalties, on the ground that it was established for charitable purposes only. The claim was refused by the Commissioners of Inland Revenue. On appeal before the Special Commissioners, the Crown contended that* (i) *Section* 37, *Income Tax Act,* 1918, *applied only to the income of charities established in the United Kingdom, and* (ii) *the Foundation was not a body established for charitable purposes only. The Special Commissioners upheld the Crown's first contention and dismissed the appeal. They added that if they were wrong on that point they thought that the Foundation was a body of persons established for charitable purposes only. The Foundation demanded a Case.*

Held, *that the words "any body of persons or trust established for charitable purposes only" in Section* 37 (1) (*b*) *are limited to bodies and trusts subject to the jurisdiction of the Courts of the United Kingdom.*

CASE

Stated under the Income Tax Act, 1952, Section 64, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the Chancery Division of the High Court of Justice.

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on 2nd March, 1953, the Camille and Henry Dreyfus Foundation, Inc., hereinafter called "the Foundation", appealed against the

[1] Reported (C.A.) [1955] Ch. 672; [1954] 3 W.L.R. 167; 98 S.J. 455; [1954] 2 All E.R. 466; 217 L.T.Jo. 340; (H.L.) [1955] 3 W.L.R. 451; 99 S.J. 560; [1955] 3 All E.R. 97; 220 L.T. Jo. 93.

refusal of the Commissioners of Inland Revenue to admit a claim to exemption from Income Tax for the years 1946–47 to 1950–51 inclusive, under the provisions of Section 37 of the Income Tax Act, 1918, and Section 19 (1) of the Finance Act, 1925. The claim was refused by the Commissioners of Inland Revenue for the following reasons:—

(*a*) the Foundation is not established in the United Kingdom and accordingly does not come within Section 37, Income Tax Act, 1918; and

(*b*) the Foundation is not established for charitable purposes only within the meaning of Section 37.

2. Evidence was given before us by Mr. Lucius Fairchild Crane, a solicitor of the Supreme Court of Judicature in England and a member of the Bar of the State of New York in the United States of America, and by Mr. Henry Blandy Guthrie, a member of the Bar of the State of New York, and a member and a director of the Foundation.

The following facts set out in paragraphs 3 to 7 inclusive of this Case were proved or admitted at the hearing.

3. The Foundation was incorporated on 21st June, 1946, under the Membership Corporations Law of the State of New York and is a membership corporation within the meaning of that law. A copy of the certificate of incorporation of the Foundation, marked "A", is attached to and forms part of this Case[1].

All the directors of the Foundation are American citizens resident in the United States of America.

4. On 27th June, 1946, Dr. Camille Dreyfus assigned to the Foundation the benefit of certain agreements under which royalties are payable by British Celanese, Ltd., a company resident in the United Kingdom. By virtue of the assignment the Foundation received the following royalties from British Celanese, Ltd., from which Income Tax was deducted as shown:—

Year	Gross amount of royalties payable	Income Tax deducted therefrom	Net amount received by the Foundation
	£ s. d.	£ s. d.	£ s. d.
1946–47	51,792 10 2	23,306 12 0	28,485 18 2
1947–48	52,937 14 8	23,821 14 0	29,116 0 8
1948–49	55,383 3 10	24,922 4 0	30,460 19 10
1949–50	59,757 10 10	26,890 16 6	32,866 14 4
1950–51	66,373 19 6	29,868 5 10	36,505 13 8
	£286,244 19 0	£128,809 12 4	£157,435 6 8

5. (*a*) The statutory law (other than special or private Acts) of the State of New York is to be found in a series of general laws of which the Membership Corporations Law is one. In the case of the Membership Corporations Law as in the case of other general laws providing for the formation of other types of corporation, a corporation to be formed thereunder can only derive its purposes and powers from the particular general law under which it is formed. It cannot arrogate to itself, by clauses in its

[1] Not included in the present print.

certificate of incorporation, purposes and powers not authorised by the Statute. If such unauthorised powers or purposes are inserted in the certificate of incorporation they do not constitute part of the charter of the corporation but are rejected as surplusage and extraneous matter. If the articles of association contain the matters required by the Statute and also contain additional matters, the former are sufficient to sustain the charter, and the additional matter does not vitiate the legitimate part of the articles, but the additional matter is disregarded by the law as though it had not been written.

(*b*) Section 2 of the Membership Corporations Law defines a membership corporation as

> "a corporation not organised for pecuniary profit, incorporated under this chapter, or under any law repealed by this chapter; but unless hereinafter specifically provided does not include a membership corporation created by a special law or a corporation subject to any of the provisions of the insurance law."

Section 10 of that Law provides that:—

> "Five or more persons may become a membership corporation for any lawful purpose, or for two or more such purposes of a kindred or incidental nature, except a purpose for which a corporation may be created under any general law other than this chapter".

To be valid, therefore, all the purposes of a corporation formed under the Membership Corporations Law must be of a kindred or incidental nature.

(*c*) Clause 2 of the certificate of incorporation (exhibit A[1]) defined the primary purpose of the Foundation as being

> "a. To advance the science of chemistry, chemical engineering and related sciences as a means of improving human relations and circumstances throughout the world".

Sub-clauses (1) and (2) of clause 2a recite the methods of accomplishing that primary purpose by the performance of acts

> "in such fields of science"

and

> "relating to such fields of science".

Sub-clause (3) of that clause refers to further methods and repeats the words

> "science of chemistry, chemical engineering and related sciences".

Clause 2b states as further purposes of the Foundation:—

> "To promote any other scientific, educational or charitable purposes".

The purposes there stated are not of a nature kindred or incidental to the primary purpose set out in clause 2a. They are accordingly not authorized by Section 10 of the Membership Corporations Law and are void and to be treated as surplusage. The use of the word "other" negatives the idea that the purposes in clause 2b are of a nature kindred or incidental to those set out in clause 2a. The "other scientific . . . purposes" referred to could comprise any branch of science, e.g., medicine or anthropology, quite distinct from and unrelated to "the science of chemistry, chemical engineering and related sciences". Moreover, "other . . . educational or charitable purposes" are in no sense kindred to or incidental to the "science of chemistry, chemical engineering and related sciences", since they might well comprise purposes which had nothing whatever to do with those sciences.

The certificate of incorporation, apart from the contents of clause 2b which are void, is not otherwise affected and remains valid.

6. During the material years the Foundation was exempt from American Federal Income Tax under the provisions of Section 101 (6) of the Inland

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(1) Not included in the present print.

Revenue Code on the ground that the Foundation was organised and operated exclusively for educational, scientific and charitable purposes.

7. During the material period, viz. from 25th June, 1946, to 31st December, 1950, the Foundation invested the sums received by way of royalties from British Celanese, Ltd. Out of its income from investments the Foundation made grants to various institutions to be applied for the advancement of chemistry and chemical engineering. A summary of the contributions so made, marked " B ", is attached to and forms part of this Case(1).

8. The following documents, which were produced to us, are attached and may be referred to(1).

(*a*) A copy of the by-laws of the Foundation.

(*b*) A copy of the assignment dated 27th June, 1946, from Camille Dreyfus to the Foundation.

(*c*) A statement of the cash receipts and disbursements of the Foundation for the period from 25th June, 1946, to 31st December, 1951.

9. It was contended on behalf of the Foundation that upon a true construction of Section 37, Income Tax Act, 1918, the Foundation, being a body of persons established for charitable purposes only, is entitled to exemption from tax thereunder notwithstanding that it was so established outside the United Kingdom.

10. It was contended on behalf of the Crown: —

(*a*) that on the authority of the decision in *Commissioners of Inland Revenue* v. *Gull*, 21 T.C. 374, the Foundation is precluded from exemption from tax under Section 37, Income Tax Act, 1918, because it is not a body of persons established in the United Kingdom; and

(*b*) that if the Foundation is not so precluded it is not a body established for charitable purposes only within the meaning of the said Section 37.

11. We, the Commissioners who heard the Case, gave our decision as follows: —

1. There are two points which require determination, viz. (*a*) whether the Foundation not being a body of persons established in the United Kingdom is thereby precluded from relief under Section 37; and (*b*) if the Foundation is not so precluded, whether it is a body of persons established for charitable purposes only.

2. As regards the first point, after a careful review of the arguments addressed to us we have come to the conclusion that we are bound by the words of Lawrence, J., in *Commissioners of Inland Revenue* v. *Gull*, 21 T.C. 374, at page 378, viz.: —

> ". . . I feel constrained to hold that the exemption applies only to the income of bodies of persons or trusts established in the United Kingdom."

These words seem to us an essential part of the *ratio decidendi* of that case and not *obiter dicta* as was argued on behalf of the Foundation.

We therefore dismiss the appeal.

3. If we are wrong as regards the first point, we think that the Foundation is a body of persons established for charitable purposes only.

(1) Not included in the present print.

The Foundation was incorporated under the Membership Corporations Law of the State of New York in the United States of America. The purposes for which the Foundation was established are set out in paragraph 2 of the certificate of incorporation. The construction, meaning and effect of the certificate of incorporation should, in our view, be determined by reference to the law of the State of New York. We accept the evidence given before us that under the law of that State the provisions of sub-paragraph b of paragraph 2 of that certificate are void and inoperative, leaving the provisions of sub-paragraphs a and c as the only operative parts of the paragraph. The provisions of sub-paragraph c are machinery provisions and the substantive purposes of the Foundation are accordingly to be found in sub-paragraph a. There can be no doubt, in our view, that the purposes there set out are charitable purposes only according to English law.

12. The Appellant, immediately after the determination of the appeal, declared to us its dissatisfaction therewith as being erroneous in point of law and in due course required us to state a Case for the opinion of the High Court pursuant to the Income Tax Act, 1952, Section 64, which Case we have stated and do sign accordingly.

13. The questions of law for the opinion of the High Court are :—

(*a*) whether the Foundation not being a body of persons established in the United Kingdom is thereby precluded from exemption from tax under the provisions of Section 37, Income Tax Act, 1918 ; and

(*b*) if the Foundation is not so precluded, whether on the evidence set out in this Case it is a body of persons established for charitable purposes only within the meaning of the said Section 37.

W. E. Bradley, H. G. Watson, } Commissioners for the Special Purposes of the Income Tax Acts.

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The case came before Wynn-Parry, J., in the Chancery Division on 18th February, 1954, when judgment was given in favour of the Crown, with costs.

Mr. F. Heyworth Talbot, Q.C., and Mr. Philip Shelbourne appeared as Counsel for the Foundation, and Mr. Roy Borneman, Q.C., Mr. J. H. Stamp and Sir Reginald Hills for the Crown.

Wynn-Parry, J.—This is an appeal from a decision of the Commissioners for the Special Purposes of the Income Tax Acts which decided that the question raised before them was one covered by the judgment of Lawrence, J., in *Commissioners of Inland Revenue* v. *Gull*, 21 T.C. 374 ; the point being that, in the course of that judgment by Lawrence, J., he said (at page 378):

> " I feel constrained to hold that the exemption "—

that is the exemption under Section 37 of the Income Tax Act, 1918—

> " applies only to the income of bodies of persons or trusts established in the United Kingdom."

Now, it is true that in that case the learned Judge found himself able to come to a decision favourable to the taxpayer upon another ground, and therefore it is true in one sense to say that the observation which I have quoted was unnecessary to his decision, but an analysis of the judgment shows that three points were raised before him on this question as to whether Section 37 of the Income Tax Act, 1918, is to be construed in a wide sense or in the more narrow sense for which the Crown contends here, namely, that it does not, in effect, give exemption to charitable bodies which are established outside the United Kingdom.

It is plain from the judgment that the first point debated and considered was one based upon the history of Section 37 by reference to the Income Tax Act, 1842, and subsequent legislation; and it is clear that a further argument was based upon the authorities to which Lawrence, J., referred, including *Colquhoun* v. *Heddon*, 2 T.C. 621.

Then, but only thirdly, came the contention that Section 21 of the Finance Act, 1923, Section 32 of the Finance Act, 1924, and Section 21 of the Finance Act, 1925, were legislative interpretations of Section 37 which were conclusive in favour of the Crown. It was upon that argument that Lawrence, J., made the pronouncement which I have quoted. That is a deliberate and considered finding of law, and, although it is true that the case was decided upon another point, I feel considerable difficulty in treating it as mere *obiter dictum*.

In the case of *Flower* v. *Ebbw Vale Steel, Iron & Coal Co., Ltd.*, [1934] 2 K.B. 132, Talbot, J., sitting as the third judge in the Court of Appeal, said this (page 154):

> "I should like to say a word regarding a point which was taken by the learned counsel for the appellant when he was discussing the case of *Dew* v. *United British Steamship Co.*(1). There is no question that the three learned judges who decided that case stated in emphatic and unambiguous language that contributory negligence is a good defence to an action of this class; but it is said that that expression of opinion can be disregarded in this Court because it was not necessary for the purpose of deciding that case that that opinion should be expressed. I do not agree, any more than the other members of this Court, that that expression of opinion was in fact unnecessary, and it appears to me that it is not legitimate to say that it should be disregarded. It is of course perfectly familiar doctrine that obiter dicta, though they may have great weight as such, are not conclusive authority. Obiter dicta in this context means what the words literally signify—namely, statements by the way."

Now, it may well be that an argument can be founded upon the basis that in the case of *Dew* v. *United British Steamship Co.* it appears that there were two points both decided in favour of the one party, whereas in this judgment of Lawrence, J., one point was decided in favour of the taxpayer, the decisive one, and the other in favour of the Crown. But, when I add to the deliberateness of the pronouncement by Lawrence, J., the circumstance that was so frankly admitted by Mr. Heyworth Talbot that ever since the judgment of Lawrence, J., the Crown has proceeded upon the basis that his statement—that is the passage to which I have referred and quoted—is to be regarded as the law upon the subject and has consistently ever since refused relief under Section 37 of the Income Tax Act, 1918, to bodies not established in the United Kingdom, then I feel that I should not be acting properly if I did other than treat the case before me as covered by what Lawrence, J., said in the case of the *Commissioners of Inland Revenue* v.

(1) 139 L.T. 628.

(Wynn-Parry, J.)

Gull(1). I have the less hesitation in coming to this view, because it is perfectly clear from what has been said, both by Mr. Heyworth Talbot and by Mr. Borneman, that this case, in any event, must go further. Ordinarily a judge of first instance would seek to give his own reasons for the purpose of giving such help as he could to the Court of Appeal, but, as there has been this deliberate pronouncement by Lawrence, J., after what, quite clearly, must have been an extended debate before him, I feel that it would not be right for me to take that course, and that I should do no more than treat myself as bound by what Lawrence, J., said in the course of his judgment and formally dismiss this appeal.

Mr. Roy Borneman.—Would your Lordship say with costs?

Wynn-Parry, J.—I think I am bound to.

Mr. F. Heyworth Talbot.—Yes ; I cannot resist that. We will hope to get them back later.

The Foundation having appealed against the above decision, the case came before the Court of Appeal (Sir Raymond Evershed, M.R., and Jenkins and Hodson, L.JJ.) on 10th, 11th, 12th and 13th May, 1954, when judgment was reserved. On 3rd June, 1954, judgment was given unanimously in favour of the Crown, with costs.

Mr. F. Heyworth Talbot, Q.C., and Mr. Philip Shelbourne appeared as Counsel for the Foundation, and Mr. Roy Borneman, Q.C., Mr. J. H. Stamp and Sir Reginald Hills for the Crown.

Sir Raymond Evershed, M.R.—In this case the Camille and Henry Dreyfus Foundation, Inc., a corporation which, as its name indicates, is a foreign corporation, constituted according to the laws of the State of New York, and to which I will hereafter refer as "the Foundation", has appealed against the refusal of the Commissioners of Inland Revenue to admit a claim on its part to exemption from Income Tax for the tax years 1946-47 to 1950-51 inclusive. In respect of each of those years the Foundation was in receipt of large sums, the gross amount of which is over a quarter of a million pounds, being payments by way of royalties from an English company, British Celanese, Ltd. It is not in dispute that tax is properly payable by the Foundation in respect of these sums unless relief therefrom is obtainable under Section 37 of the Income Tax Act, 1918. It is and has, however, been the case of the Foundation that it is entitled to exemption on the ground that the sums in question form part of the income of a

> "body of persons . . . established for charitable purposes only"

within the terms of paragraph (*b*) of Section 37 (1) of the Act, the income in question having in fact been applied exclusively for such purpose.

It has been conceded on the part of the Foundation that by the phrase "for charitable purposes" is meant purposes which are by the law of the United Kingdom understood to be, or defined as being, charitable, that is, within the scope and intendment of the preamble to the Statute of Elizabeth, 43 Eliz., c. 4 ; but it has been the Foundation's case that, though established

(1) 21 T.C. 374.

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by the laws of New York State, that is, constituted as a membership corporation according to New York law, and though carrying on all its activities in that State or in the United States of America, nevertheless the character of its activities, having regard to the terms, as interpreted according to the evidence of New York lawyers, of its certificate of incorporation, is such as to qualify them as charitable under our law. Upon this point the finding of the Special Commissioners was favourable to the Foundation; and in the circumstances Wynn-Parry, J., expressed no view upon it. But the Special Commissioners also held that in order to obtain the privilege of exemption under Section 37 of the Act, the body of persons claiming such privilege must be one established under and in accordance with the laws of the United Kingdom; in other words, the Foundation, being a foreign corporation not subject to the jurisdiction of our Courts, is *ipso facto* debarred from the benefits of Section 37. Upon this matter Wynn-Parry, J., upheld the decision of the Special Commissioners, regarding himself as bound by the decision and reasoning of Lawrence, J., in *Commissioners of Inland Revenue* v. *Gull*, 21 T.C. 374, referred to by the Special Commissioners in their Case Stated. In the cited case (at page 378), Lawrence, J., after indicating that he would himself have been disposed to construe the words "any body of persons . . . established" as comprehending a body established in fact, for the requisite purposes, in any part of the world, felt constrained by certain later Acts of Parliament, clearly proceeding upon the basis of the more limited interpretation, to hold that the bodies of persons indicated in Section 37 were bodies established under and in accordance with our laws.

As the matter is *res integra* in this Court, it will be necessary for me at a later stage to express my opinion on the view taken by Lawrence, J., as it will also be desirable, having regard to the argument we have heard, for me to express my view on the validity of the finding of the Special Commissioners in the Foundation's favour that its objects are exclusively charitable as understood by our law.

The first question, being, as I have said, *res integra* in this Court, is plainly a matter of the interpretation of the few relevant words in Section 37 and may therefore be said to fall within a small compass. We heard from both sides considerable argument on general considerations addressed to what was called the proper approach to the essential matter of construction. Thus, on the part of the Foundation, we were reminded of the need in taxing Statutes—indeed in all Statutes—to interpret the words according to their ordinary sense and to avoid reading into the language used other words not clearly required by the context itself. It was also urged upon us, as a matter of principle, fairness and sense, that if, as in the present case, a non-resident was made liable to suffer tax on income arising in this country no less than a resident, then the non-resident like the resident should be entitled to the benefit of any relevant exemption.

On the part of the Crown it was submitted that, since all taxation was raised by Parliament for employment for the benefit of the Kingdom, so the logic of exemption was *prima facie* to be found in the Parliamentary view that the income exempted would be used or applied in a manner so beneficial to the community as to outweigh the claim to tax it—a consideration which could have no place where the income belonged to a non-resident and was used by him outside the United Kingdom. Mr. Borneman also

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cited a number of cases, beginning with *Jefferys* v. *Boosey*, 4 H.L.Cas. 815, in support of the general proposition that when Parliament imposes obligations or confers privileges upon any classes of persons specified in its enactments, it must be taken *prima facie* to be confining its purpose to persons or bodies of persons resident in, or subject to the jurisdiction of the Courts of, the United Kingdom. The proposition, as such, is no doubt incontrovertible. But I cannot think that it plays a useful part in the solution of the present problem. The term " body of persons " is defined thus in Section 237 of the Income Tax Act, 1918:—

> " ' Body of persons ' means any body politic, corporate, or collegiate, and any company, fraternity, fellowship and society of persons, whether corporate or not corporate ".

The words in the definition are of very wide import. But even if, by application of the general principle above cited, they might otherwise *prima facie* have been confined to bodies of persons within the United Kingdom or subject to the jurisdiction of its Courts, it is quite clear that they are in fact used, and appropriately used, in certain parts of the Act to comprehend foreign or wholly non-resident bodies—see, for example, Rule 1 of the All Schedules Rules when read together with Paragraph 1 (*a*) (iii) of Schedule D.

In these circumstances it does not appear to me that any *a priori* inference can be relied upon in favour of limiting the term " body of persons " in Section 37. I have not indeed, for my part, found any of the more general arguments to which I have alluded of material significance one way or the other in the present case. The answer to the problem posed must, in my judgment, depend upon the true interpretation, according to ordinary principles, of the relevant phrase—and, as I think, of the essential word therein " established "—in the context in which it is found in Section 37.

The Section itself is the first of a group which follows the cross-heading " Relief to Charities, Friendly Societies, &c." It is Section 37 which picks up the word " charities " and I will return to it presently. Section 38 is concerned with the British Museum. Friendly societies form a part of the subject-matter of Section 39 and it is not in doubt that by friendly societies is meant societies constituted, regulated by and subject to our own laws. So in the succeeding parts of Section 39 the bodies or corporations, anticipated by the word " &c." in the cross-heading, are also bodies or corporations constituted and regulated by, and subject to, the laws of the United Kingdom. The final Section, 40, deals with penalties and is applicable to all the preceding Sections in the group, including Section 37. The final Sub-section, (4), may be quoted in full :

> " A person who makes a false or fraudulent claim for exemption under the said sections in respect of any interest, annuities, dividends or shares of annuities charged or chargeable under Schedule C shall forfeit the sum of one hundred pounds, and if such claim is made by any person in his own behalf he shall in addition be liable to be charged in treble the tax so chargeable."

As was observed during the argument, this Sub-section with its penalty of treble tax would be, to say the least, administratively difficult if not inappropriate in the case of a non-resident.

If, then, the bodies of persons referred to in Section 37 (1) (*b*) include foreign or non-resident bodies, it must be conceded at least that they are in that respect alone of all the bodies and associations referred to in the group of sections. I turn, then, next to the word " charities " which in the cross-heading must be taken to introduce them. And by charities must, I take it, be meant charitable institutions. Now, to my mind, the words

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"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.

Mr. Heyworth Talbot was not, I think, disposed to dissent from what I have so far said; and he agreed that the charitable purposes for which exclusively the bodies of persons must be established are purposes which would be charitable according to our law. But nonetheless, he contended, there was nothing in the material language of Section 37 sufficient to justify any local limitation of the bodies of persons named.

The result, in my judgment, would be at least awkward and artificial. There is contemplated, according to the argument, a "body of persons" established, that is constituted, according to the law of, say, the State of New York or of France or of any other country in the world, whose objects and the extent of whose powers would therefore depend upon or be regulated by, and would have to be defined and interpreted by, the laws of that country; yet those powers and objects, so regulated and interpreted, must find their place somehow within the scope and meaning of the preamble to 43 Eliz., c. 4, as expounded by the decisions of our Courts. Mr. Heyworth Talbot says that the difficulty of the conception is, at most, administrative—the onus is upon the foreign claimant for relief and, unless he proves his case, he fails to obtain it. I will leave aside the administrative difficulty, great though I think it is and further enhanced by the condition at the end of the paragraph "so far as the same", i.e. the sums liable to be taxed, "are applied to charitable purposes only". In my judgment it is in the conception itself—the conception of a corporation regulated according to the laws of a foreign country and carrying on the whole of its activities in that country and yet being able to show by reference to the standard of the Elizabethan preamble and to the decisions of our Courts thereunder that it is "established for charitable purposes only"—that I find what appears to me to be an inherent incompatibility.

In the many cases which in recent years have received the consideration of the House of Lords, emphasis has time and again been laid upon the necessity in every case, with the single exception of the so-called "poor relations" cases, of the requisite element of public benefit or benefit to the community. What public, what community, is contemplated? I should have thought, I confess, at first sight that the answer was—the public, the community, of the United Kingdom. It is also a significant characteristic of our system that to the Attorney-General, representing the Crown as *parens patriae*, belongs the right and duty of invoking the powers of the Courts to secure the due execution of charitable trusts—a power and duty which postulate that the charitable institution itself should be subject to the jurisdiction of our Courts. It is difficult to see how these principles or characteristics can have any application to a foreign institution conducting all its activities abroad. I cannot, however, find that the meaning and

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scope of the requirement of a benefit to the community has ever been judicially considered from this point of view. On the contrary, there are undoubtedly instances of trusts being held or regarded as charitable which were exclusively for the benefit of objects outside the United Kingdom ; *Special Commissioners of Income Tax* v. *Pemsel*(1), [1891] A.C. 531, is indeed one of them. It may be that, on very broad and general grounds, relief of poverty or distress in any part of the world, or the advancement of the Christian religion in any part of the world, would be regarded as being for the benefit of the community in the United Kingdom. I see, however, formidable difficulties where the objects of the trust were, say, the setting out of soldiers or the repair of bridges or causeways in a foreign country. To such cases the argument of public policy, meaning United Kingdom public policy, might be the answer. A somewhat extreme case was that of In re *Robinson*, [1931] 2 Ch. 122, where Maugham, J., after considering a number of authorities, appears clearly to have regarded a gift by a testator of his residue to the government of the German Reich for the purpose of relieving German soldiers disabled in the First World War as a good charitable trust.

But, though there are cases in the books in which the application of a fund for objects wholly outside the United Kingdom and the jurisdiction of its Courts have been held to be valid charitable trusts, still the question here is, I think, a rather different one. I have not yet considered the particular context of Section 37 of the Income Tax Act, 1918. 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. In my judgment that view of the *prima facie* significance of the words is not affected by the existence of cases like In re *Robinson*. I could better understand it if, in order to qualify under the Section, it was sufficient for a body of persons established according to the laws of country X to show that it was so established exclusively for purposes which, by the law of country X, were charitable. But that view is impossible ; for, as it is conceded, the word " charitable " is a term of art, significant only according to our laws, and it has not been suggested that it could be somehow applied by analogy in country X.

I come at last, as I should perhaps at first, to the context of the Section itself and particularly to the use of the word " any " before " body of persons ", on which the Foundation has strongly relied.

I set out the Section in full : —

> " 37.—(1) Exemption shall be granted—*(a)* from tax under Schedule A in respect of the rents and profits of any lands, tenements, hereditaments, or heritages belonging to any hospital, public school or almshouse, or vested in trustees for charitable purposes, so far as the same are applied to charitable purposes only: Provided that any assessment upon the respective properties shall not be vacated or altered, but shall be in force and levied, notwithstanding

(1) 3 T.C. 53.

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the allowance of any such exemption; (*b*) from tax under Schedule C in respect of any interest, annuities, dividends or shares of annuities, and from tax under Schedule D, in respect of any yearly interest or other annual payment forming part of the income of any body of persons or trust established for charitable purposes only, or which, according to the rules or regulations established by Act of Parliament, charter, decree, deed of trust, or will, are applicable to charitable purposes only, and so far as the same are applied to charitable purposes only; (*c*) from tax under Schedule C in respect of any interest, annuities, dividends or shares of annuities, in the names of trustees applicable solely towards the repairs of any cathedral, college, church or chapel, or any building used solely for the purpose of divine worship, and so far as the same are applied to those purposes."

In my judgment the context of Section 37, so far from assisting or requiring that the relevant formula in paragraph (*b*) should be interpreted in accordance with Mr. Heyworth Talbot's argument, supports and emphasises the local limitation which, for reasons which I have already given, *prima facie*, to my mind, attaches to the words. It was conceded, as I understood, that since the lands, tenements, etc., mentioned in paragraph (*a*) were necessarily lands, tenements, etc., within the United Kingdom, so the words "any hospital, public school or almshouse" must have the same local limitation. And it was also conceded that by the words "any cathedral, college, church or chapel" and the general words which follow in paragraph (*c*) must have been meant any cathedral, college, etc., within the confines of the United Kingdom. It follows, then, that the wide meaning sought to be attributed to the relevant words in paragraph (*b*) must be justified by the words themselves, which the context is insufficient or inapt to restrict. But it is to be noted, first, that the vital phrase adds to the words "body of persons" the words "or trust". And the word "trust" is a word peculiarly referable to our own system of law. It is true that to other countries, which have adopted our own legal system and essential characteristics, the word "trust" would have a precise and certain significance. But if the Foundation's argument is sound, the formula in question should have a universal application so that the term "body of persons or trust" would be intelligible in reference to countries other than those which have embraced our legal conceptions.

Still more significant to my mind is the circumstance that the formula

"any body of persons or trust established for charitable purposes only"

is followed by the alternative

"or which, according to the rules or regulations established by Act of Parliament, charter, decree, deed of trust, or will, are applicable to charitable purposes only".

It is, in my judgment, reasonably clear that the alternative was added in order to cover those cases in which only a part of the income is, by virtue of the Act of Parliament or other instrument named, applicable to charitable purposes, in contradistinction to those bodies of persons or trusts which are exclusively established for such purposes. In my view, however, the alternatives are true alternatives; the distinction, that is to say, is between institutions, in other respects alike, whose income is either, on the one hand, wholly applicable to the purposes named, or, on the other hand, is as to the relevant part only so applicable. And since, in my judgment, it cannot be in doubt that by "Act of Parliament" is meant an Act of the United Kingdom Parliament, so it follows, in my view, that by "charter, decree, deed of trust, or will" is meant an instrument of the kind specified subject to, and taking effect according to, the laws of the United Kingdom. The alternative formula must therefore be regarded as wholly limited by

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reference to our local law; and if this is so, then, as it seems to me, the earlier phrase "any body of persons or trust established," etc., must be regarded as equally so limited.

In my judgment, therefore, the bodies of persons mentioned in the paragraph cannot comprehend foreign institutions such as the Foundation. I have earlier stated my view that the essential word is "established". In my judgment, whatever might be the true significance of the four words "any body of persons" taken in isolation, those words in the context of paragraph (*b*) of Section 37 (1) of the 1918 Act, and particularly when immediately followed by the words "or trust established for charitable purposes only", must be limited to bodies of persons so constituted and regulated as to be, in reference to the income in question, subject to the jurisdiction of the United Kingdom Courts. I think that in the context the word "any" ceases to be able to confer an unlimited significance and becomes in effect no more emphatic than the indefinite article "a". A body such as the Foundation, though incorporated under the laws of a foreign country and being, therefore, a foreign corporation, might derive all its income from the United Kingdom and carry on all its activities in the United Kingdom. In such case, though it is not necessary for me to decide the point, the Foundation might successfully assert that it was a body of persons established for charitable purposes only. But on the facts of this case, and since the activities of the Foundation are carried out exclusively in America, the Foundation fails, in my judgment, to bring itself within the terms of Section 37 of the Act and so fails to make good its claim to the exemption which that Section confers.

In the case of *Commissioners of Inland Revenue* v. *Gull*(1), Lawrence, J., held that the trust in question, though for the benefit of persons in the province of Ontario, was nevertheless established in the United Kingdom and therefore within the scope of Section 37 of the Income Tax Act, 1918. But that learned Judge held—and it follows from what I have said that I think he rightly held—that the privilege of exemption conferred by the Section could not be enjoyed by any body of persons established outside the United Kingdom. It does not, however, appear that the case of *Ormond Investment Co., Ltd.* v. *Betts*, 13 T.C. 400, was cited to the learned Judge. The speeches of the noble Lords in that case—and the speeches in the later case before the House of *Commissioners of Inland Revenue* v. *Dowdall O'Mahoney & Co., Ltd.*, 33 T.C. 259—must be taken to have established clearly that an expression, explicit or implicit, by Parliament in a later Act of its intention in an earlier Statute cannot be treated as altering, *ex post facto*, the effect of the earlier enactment according to the proper interpretation of the language therein used. To take but one example from these speeches, I cite the language of Lord Buckmaster in the earlier case, 13 T.C., at page 428:—

> "I do not think that, in the circumstances of this case, the subsequent Statute can properly be referred to for the purpose of interpreting the earlier. It is, of course, certain that Parliament can by Statute declare the meaning of previous Acts. It would be competent for them to do so even though their declaration offended the plain language of the earlier Act. It would be an unnecessary step to take unless it were intended contrary to the general principles of legislation to make the explanatory Act retrospective, seeing that the subsequent Statute could by independent enactment do what was desired. It is also possible that where Acts are to be read together, as they are in this case, a provision in an earlier Act that was so ambiguous that it was open to two perfectly clear and plain constructions could, by a subsequent incorporated

(1) 21 T.C. 374.

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> Statute, be interpreted so as to make the second Statute effectual, which is what the Courts would desire to do; and it is also possible that, where a Statute has created a crime or imposed a penalty, a subsequent Act showing that that crime was intended to have a limited interpretation or that the circumstances were to be regarded as narrow in which the penalty attached, would be used for the purpose of giving effect to the well-known principle of construction to which I referred at an earlier stage. But I find myself unable to accept what Lord Justice Sargant said, that the principles in certain cases are applicable to the construction of successive Acts of Parliament."

In so far, therefore, as Lawrence, J., expressed the view that the terms of Section 21 of the Finance Act, 1923, Section 32 of the Finance Act, 1924, and Section 21 of the Finance Act, 1925, effectively gave, retrospectively, an interpretation to the material terms of Section 37 of the Income Tax Act, 1918, which those terms would not otherwise bear, his reasoning would be in conflict with the decisions of the House of Lords to which I have referred. If I am right in the view which I have formed of the proper meaning of Section 37 of the 1918 Act, it is unnecessary to pay any regard to the later Statutes, and the point does not, therefore, arise. But if I am wrong, then at least, in my judgment, the construction which I prefer is fairly open as an alternative to that for which Mr. Heyworth Talbot has contended. And, in that event, it is equally clear, on the authority of the same cases, that the Court will tend to adopt the construction which is in conformity with that inherent in the later legislation *in pari materia*—particularly where the later enactments are to be read as one with the original Act. So much clearly appears from the passage I have quoted from Lord Buckmaster's speech in *Ormond Investment Co., Ltd.* v. *Betts*[1].

Mr. Heyworth Talbot was able to make some criticisms of the drafting of the relevant Sections of the later Acts. But their general sense cannot be in question. Section 21 of the Act of 1923, passed following the establishment of the Irish Free State, was directed, beyond question, to preserving for the limited period stated in the Section (which period was extended by the material Sections of the later Acts) to bodies of persons or trusts established in what had become the Irish Free State the benefit of the exemption conferred by Section 37 of the 1918 Act. I quote the terms of Section 21 of the 1923 Act in full:—

> "Subject as hereinafter provided, section thirty-seven of the Income Tax Act, 1918 (which grants exemption in respect of charities), shall, in the case of rents and profits of any lands, tenements, hereditaments, or heritages belonging to any hospital, public school, or almshouse in the Irish Free State, or vested in trustees in the Irish Free State for charitable purposes, and in the case of a body of persons or trust established in the Irish Free State for charitable purposes only, and in the case of income which according to rules or regulations established by Act of Parliament, charter, decree, deed of trust or will in the Irish Free State, is applicable to charitable purposes only, or which, in the names of trustees in the Irish Free State, is applicable solely towards the repairs of any cathedral, college, church or chapel, or any building used solely for the purpose of divine worship, apply, as respects income tax chargeable for the year 1923-24, as if the Irish Free State had not been constituted: Provided that this section shall not apply except where the lands, tenements, hereditaments, or heritages belonged to the hospital, public school, or almshouse, or were vested in the trustees, on the fifth day of April, nineteen hundred and twenty-three, or the interest, annuities, dividends, shares of annuities, yearly interest or other annual payment arise from investments which were held by the body of persons, trust, or trustees, or were subject to rules or regulations as aforesaid, on the fifth day of April, nineteen hundred and twenty-three."

In my judgment, whatever be the defects in drafting, it cannot be open to reasonable doubt that Parliament, in enacting the Section cited, proceeded

(1) 13 T.C. 400.

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upon the view of the interpretation of Section 37 (1) (*b*) of the 1918 Act for which the Crown contends On any other view the new enactment was otiose and futile. I add that, as appears from the terms of Sections 37 (1) and 38 of the Finance Act, 1950, Parliament has since remained consistently faithful to its interpretation of Section 37 of the 1918 Act.

Having come to the conclusion, for the reasons I have given, that the appeal fails upon the first point raised in the Case Stated, it is not strictly necessary for me to deal with the second, namely, the Commissioners' finding that the activities of the Foundation were and are charitable as that term is understood in English law. But since the matter has been argued, it seems to be desirable that I should express my view upon it.

The facts are fully stated in the Case and may briefly be recapitulated thus. The Foundation was incorporated in the year 1946 in and according to the laws of the State of New York, in which State or elsewhere in the U.S.A. all its activities have always been conducted. It is a membership corporation within the meaning of the Membership Corporations Law of that State. By that law a membership corporation is defined, *inter alia*, as a

> " corporation not organised for pecuniary profit ".

By a later section of the same Act the purposes of such a corporation, if more than one, must be of a " kindred or incidental " character. So much is agreed. It is also not in dispute that if by any part of its constitutional regulations such a corporation seeks to assume powers in excess of those permitted by the Membership Corporations Law, that part will be rejected as entirely ineffective. Similarly it is agreed that if some later paragraph of its certificate of incorporation, which corresponds with the memorandum of association of an English limited company, contains a purpose going beyond, or not kindred or incidental to, the main purpose earlier stated in the certificate, the later paragraph will be also treated as futile or repugnant and regarded as non-existent.

In the circumstances, and having regard to the admissions made in argument on the part of the Crown, the sole question for determination is whether the Special Commissioners were entitled to find, as they did, that paragraph b of clause 2 of the Foundation's certificate of incorporation must be rejected as purporting to confer a power in excess of, or not kindred or incidental to, the purpose defined in paragraph a of the same clause.

Paragraph a, so far as it is necessary to recite it, is as follows:

> " To advance the science of chemistry, chemical engineering and related sciences as a means of improving human relations and circumstances throughout the world ".

The Crown has conceded throughout the present case, and I therefore assume for the purposes of this judgment, that the character of the purpose specified in this paragraph is such as would be held in our Courts to be charitable by our law.

Paragraph b of clause 2 is:—

> " To promote any other scientific, educational or charitable purposes ".

The Special Commissioners accepted the evidence of the expert legal witnesses called before them by the Foundation, and there was no evidence to the contrary effect called by the Crown, that paragraph b being neither kindred nor incidental to paragraph a had to be wholly rejected ; with the result that the Foundation's purposes were to be discerned exclusively in paragraph a.

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The question posed, being one of foreign law, is *prima facie* a matter of fact for the final determination of the Commissioners. The Crown has, however, concentrated its attack on the following passage in the Case:—

> "The purposes there stated are not of a nature kindred or incidental to the primary purpose set out in clause 2a. They are accordingly not authorised by Section 10 of the Membership Corporations Law and are void and to be treated as surplusage. The use of the word 'other' negatives the idea that the purposes in clause 2b are of a nature kindred or incidental to those set out in clause 2a. The 'other scientific . . . purposes' referred to could comprise any branch of science, e.g., medicine or anthropology, quite distinct from and unrelated to 'the science of chemistry, chemical engineering and related sciences'. Moreover, 'other . . . educational or charitable purposes' are in no sense kindred or incidental to the 'science of chemistry, chemical engineering and related sciences', since they might well comprise purposes which had nothing whatever to do with those sciences."

It was not contended that in this paragraph the Commissioners were stating their own reasons for the conclusion at which they arrived. The Crown's argument was that, although the passage cited was an epitome or representation of the evidence given by the two New York lawyers called for the Foundation, the evidence went beyond the proper scope and competence of expert testimony, being no more than the opinion of the witnesses upon the significance of the two common English words "kindred" and "incidental", which the Court was free to reject and ought to reject.

I have been unable to accept this argument. Although it is true that "kindred" and "incidental" are words of ordinary usage in the English language, nevertheless, in the context in which they appear in the Membership Corporations Law they have, or are at least capable of having in some degree, the characteristics of terms of art. I think, therefore, that it would be competent to a New York lawyer to state, as an expert, his opinion on the question how in the circumstances of the present case they would be construed by the Superior Courts of New York State; and I think that the passage I have cited must be taken to represent such an opinion on the part of the witnesses.

In my judgment, therefore, the Commissioners were entitled to accept that view of the effect of the law of New York State and, as a matter of fact, to conclude as they did. I add that in any event the Crown appears, having regard to the concessions made on its behalf, to be upon the horns of a dilemma. Either paragraph b is kindred or incidental to paragraph a or it is not. If it is, then the charitable quality of the latter paragraph is not qualified or disabled by the former. If it is not, then, as the Crown agrees, paragraph b must be treated as struck out of the certificate.

But, for the reasons which I have earlier stated, I think the Crown is entitled to succeed on the first point and that the appeal must be dismissed accordingly.

Jenkins, L.J.—This is an appeal by the Camille and Henry Dreyfus Foundation, Inc. (hereinafter called "the Foundation"), a body incorporated in the State of New York in the United States of America as a membership corporation under the Membership Corporations Law of that State, from a judgment of Wynn-Parry, J., dated 18th February, 1954, dismissing the Foundation's appeal by way of Case Stated from a decision of the Special Commissioners to the effect that the Foundation is not entitled to the exemption from Income Tax afforded to certain charitable institutions by Section 37 (1) (*b*) of the Income Tax Act, 1918, and claimed by the Foundation for the years 1946-47 to 1950-51 inclusive.

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The income in question consisted of certain royalties payable by British Celanese, Ltd., a company resident in the United Kingdom, under certain agreements the benefit of which was on 27th July, 1946, assigned by Dr. Camille Dreyfus to the Foundation. This income was liable to Income Tax under Case III of Schedule D, and tax was duly deducted by British Celanese, Ltd., from the payments from time to time made to the Foundation, the gross yearly amounts of which ranged from £51,792 in 1946-47 to £66,373 in 1950-51.

The income in question was by the express terms of the Act chargeable with the tax so deducted notwithstanding that the Foundation was a foreign corporation resident abroad, for Paragraph 1 of Schedule D provides that

> "Tax under this Schedule shall be charged in respect of—(*a*) The annual profits or gains arising or accruing— . . . (iii) to any person, whether a British subject or not, although not resident in the United Kingdom, from any property whatever in the United Kingdom . . ."

That the Foundation is for this purpose a person appears from Rule 1 of the All Schedules Rules, which provides that

> "Every body of persons shall be chargeable to tax in like manner as any person is chargeable under the provisions of this Act",

and from the definition of the expression "body of persons" in Section 237 of the Act as

> "any body politic, corporate, or collegiate, and any company, fraternity, fellowship and society of persons, whether corporate or not corporate".

The Foundation, however, contends that, being a body of persons within the meaning of the Act for the purposes of liability to tax under Case III of Schedule D, notwithstanding its foreign incorporation and residence, it should also be held to be a body of persons within the meaning of the Act for the purposes of the exemption from such tax afforded by Section 37 (1) (*b*) of the Act, the further qualifications for exemption prescribed by the Sub-section, to the effect that it should be "established", and established "for charitable purposes only", being satisfied as to the first by its incorporation in the State of New York and as to the second by the purposes of its formation as defined by its certificate of incorporation, which are claimed to be "charitable purposes only" within the meaning of the Sub-section.

I should next refer to the terms of Section 37. The directly material provisions are those contained in Sub-section (1) (*b*), but in view of the course taken by the argument I had better read it in full.

> "37.—(1) Exemption shall be granted—(*a*) from tax under Schedule A in respect of the rents and profits of any lands, tenements, hereditaments, or heritages belonging to any hospital, public school or almshouse, or vested in trustees for charitable purposes, so far as the same are applied to charitable purposes only: Provided that any assessment upon the respective properties shall not be vacated or altered, but shall be in force and levied, notwithstanding the allowance of any such exemption; (*b*) from tax under Schedule C in respect of any interest, annuities, dividends or shares of annuities, and from tax under Schedule D, in respect of any yearly interest or other annual payment forming part of the income of any body of persons or trust established for charitable purposes only, or which, according to the rules or regulations established by Act of Parliament, charter, decree, deed of trust, or will, are applicable to charitable purposes only, and so far as the same are applied to charitable purposes only; (*c*) from tax under Schedule C in respect of any interest, annuities, dividends or shares of annuities, in the names of trustees applicable solely towards the repairs of any cathedral, college, church or chapel, or any building used solely for the purpose of divine worship, and so far as the same are applied to those purposes."

For reasons which will presently appear, I should add that Section 38 affords to the trustees of the British Museum the like exemptions " as are granted to charitable institutions under this Act ", while Section 39 affords exemptions from tax to friendly societies, trade unions, savings banks, etc.

The objects of the Foundation are set out in its certificate of incorporation, the material provisions of which are the following:—

" 1. The name of the corporation is the Dreyfus Foundation, Inc.

2. The purposes for which it is formed are:

a To advance the science of chemistry, chemical engineering and related sciences as a means of improving human relations and circumstances throughout the world:

(1) by providing funds or services to and for individuals without regard to race, sex, creed, color or age, who have excelled or shown promising ability in such fields of science and who would benefit by such assistance in pursuing further their studies or research in such fields of science;

(2) by providing funds or services to or for organisations which afford facilities for the production, collection or dissemination of beneficial information and the control of potentially harmful information relating to such fields of science; and

(3) by engaging in any and all forms of activity which will employ the science of chemistry, chemical engineering and relating sciences to serve or accomplish the purposes of the Foundation, including the creation and maintenance of laboratories, research bureaux or agencies and facilities for the exchange, publication, distribution, coordination and control of scientific information; and

b To promote any other scientific, educational or charitable purposes ".

After setting out in paragraph 2c the various incidental powers as regards the holding of property and so forth which need not be stated in detail, the document proceeds as follows:—

" 3. No part of the net income of the corporation shall inure to the benefit of any private member or individual, and no member, director, officer or employee of the corporation shall receive or be lawfully entitled to receive any pecuniary profit of any kind therefrom, except reasonable compensation for services in effecting one or more of its purposes.

4. The territory in which the operations of the corporation are principally to be conducted is the United States of America, its possessions and dependencies, but the operations of the corporation shall not be limited to such territory.

5. The city in which its principal office is to be located is the City of New York, County and State of New York."

According to the evidence of two New York lawyers given before and accepted by the Special Commissioners, paragraph 2b of the certificate of incorporation is under the relevant law of the State of New York void and of no effect, but this does not detract from the validity of the remaining provisions of the certificate, which are to be construed as though the certificate had never contained the offending paragraph 2b. There was some argument as to the adequacy and admissibility of this evidence, to which I will presently return.

The Foundation has at all material times been resident outside the United Kingdom, that is to say in the State of New York; and while under paragraph 4 of the certificate its operations, though principally to be conducted in the United States of America, are not limited to that territory, it has never in fact conducted any of its operations in the United Kingdom.

Pursuant to the provisions of Section 19 (1) of the Finance Act, 1925, the Foundation applied to the Commissioners of Inland Revenue for exemption from tax under Section 37 (1) (*b*) of the Act of 1918. The claim was

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refused by the Commissioners of Inland Revenue, their reasons for such refusal being (*a*) that the Foundation was not established in the United Kingdom and accordingly did not come within Section 37; and (*b*) that the Foundation was not established for charitable purposes only within the meaning of Section 37.

The Foundation thereupon appealed to the Special Commissioners under the provisions of Section 19 (2) and (3) of the Act of 1925. The Special Commissioners likewise rejected the claim, expressing their decision thus:—

> "1. There are two points which require determination, viz. (*a*) whether the Foundation not being a body of persons established in the United Kingdom is thereby precluded from relief under Section 37; and (*b*) if the Foundation is not so precluded, whether it is a body of persons established for charitable purposes only.
>
> 2. As regards the first point, after a careful review of the arguments addressed to us we have come to the conclusion that we are bound by the words of Lawrence, J., in *Commissioners of Inland Revenue* v. *Gull*, 21 T.C. 374, at page 378, viz.:—'. . . I feel constrained to hold that the exemption applies only to the income of bodies of persons or trusts established in the United Kingdom.' These words seem to us an essential part of the *ratio decidendi* of that case and not *obiter dicta* as was argued on behalf of the Foundation.
>
> We therefore dismiss the appeal.
>
> 3. If we are wrong as regards the first point, we think that the Foundation is a body of persons established for charitable purposes only."

At the request of the Foundation the Special Commissioners stated a Case for the opinion of the High Court on the following questions of law:—

> "(*a*) whether the Foundation not being a body of persons established in the United Kingdom is thereby precluded from exemption from tax under the provisions of Section 37, Income Tax Act, 1918; and
>
> (*b*) if the Foundation is not so precluded, whether on the evidence set out in this Case it is a body of persons established for charitable purposes only within the meaning of the said Section 37."

The case came before Wynn-Parry, J., who dismissed the appeal, holding that he should treat himself as bound to do so by the judgment of Lawrence, J., in the case referred to by the Special Commissioners of *Commissioners of Inland Revenue* v. *Gull*, 21 T.C. 374. In that case (at page 378) Lawrence, J., against his own inclination felt himself constrained by the effect of the later enactments hereinafter mentioned "to hold that the exemption", i.e. the exemption afforded by Section 37, "applies only to the income of bodies of persons or trusts established in the United Kingdom"; and although he was able to decide in favour of the taxpayer on the ground that the trust there in question was in fact established in the United Kingdom, so that it was arguable that the views he expressed as to the scope of Section 37 were *obiter* inasmuch as they did not provide the basis of his actual decision, it is, as Wynn-Parry, J., pointed out, clear from the report that the matter was fully argued before him on lines closely resembling those followed by the arguments used in the present case.

The consideration which Lawrence, J., regarded as constraining him to construe Section 37 as he did was the legislative interpretation placed on Section 37 by Section 21 of the Finance Act, 1923, which provided for the exemption of charities in the Irish Free State in respect of Income Tax for the year 1923–24, and by Section 32 of the Finance Act, 1924, and Section 21 of the Finance Act, 1925, which respectively provided for a like exemption for the years 1924–25 and 1925–26, 1926–27 and 1927–28, and finally by the

Finance Act, 1926, Section 23, and Part II of the Second Schedule to that Act, which provided under Paragraph 3 of the latter that

> "Section twenty-one of the Finance Act, 1925, which grants an exemption for charities in the Irish Free State, shall cease to have effect."

To appreciate the force of this consideration it is necessary to read at length Section 21 of the Finance Act, 1923, which is in these terms:—

> "Subject as hereinafter provided, section thirty-seven of the Income Tax Act, 1918 (which grants exemption in respect of charities), shall, in the case of rents and profits of any lands, tenements, hereditaments, or heritages belonging to any hospital, public school, or almshouse in the Irish Free State, or vested in trustees in the Irish Free State for charitable purposes, and in the case of a body of persons or trust established in the Irish Free State for charitable purposes only, and in the case of income which according to rules or regulations established by Act of Parliament, charter, decree, deed of trust or will in the Irish Free State, is applicable to charitable purposes only, or which, in the names of trustees in the Irish Free State, is applicable solely towards the repairs of any cathedral, college, church or chapel, or any building used solely for the purpose of divine worship, apply, as respects income tax chargeable for the year 1923-24, as if the Irish Free State had not been constituted: Provided that this section shall not apply except where the lands, tenements, hereditaments, or heritages belonged to the hospital, public school, or almshouse, or were vested in the trustees, on the fifth day of April, nineteen hundred and twenty-three, or the interest, annuities, dividends, shares of annuities, yearly interest or other annual payment arise from investments which were held by the body of persons, trust, or trustees, or were subject to rules or regulations as aforesaid, on the fifth day of April, nineteen hundred and twenty-three."

It is clear that for the purposes of this Section and the subsequent legislation on the same topic it was assumed that the exemption afforded by Section 37 to bodies of persons or trusts established for charitable purposes only was limited to bodies of persons or trusts established in the United Kingdom, and that the secession of the Irish Free State from the United Kingdom would consequently have the effect of depriving bodies of persons or trusts established in the Irish Free State of the exemption in the absence of legislation continuing it in their favour.

We were referred to a number of authorities regarding the effect, if any, upon the construction of a given enactment of assumptions as to its meaning expressly or impliedly made in later legislation not amounting to an amendment of the earlier enactment.

In *Ormond Investment Co., Ltd.* v. *Betts*, 13 T.C. 400, at page 429, Lord Buckmaster cited with approval the following passage from the judgment of Lord Sterndale, M.R., in *Cape Brandy Syndicate* v. *Commissioners of Inland Revenue*, 12 T.C. 358, at page 373:—

> "I think it is clearly established in *Attorney-General* v. *Clarkson*[1], that subsequent legislation on the same subject may be looked to in order to see what is the proper construction to be put upon an earlier Act where that earlier Act is ambiguous. I quite agree that subsequent legislation, if it proceed upon an erroneous construction of previous legislation, cannot alter that previous legislation, but if there be any ambiguity in the earlier legislation then the subsequent legislation may fix the proper interpretation which is to be put upon the earlier."

Having cited this passage, Lord Buckmaster observed:—

> "This is in my opinion an accurate expression of the law, if by 'any ambiguity' is meant a phrase fairly and equally open to divers meanings, but in this case the difficulty is not due to ambiguity but to the application of rules suitable for one purpose to another for which they are wholly unfit."

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(1) [1900] 1 Q.B. 156.

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In the same case(1), at page 435, Lord Atkinson said this:—

> "Lord Justice Sargant seems to hold that a legislative interpretation of the Statute of 1918 is to be found in this Section 26 of the Act of 1924, and therefore the case comes within a well-recognised principle dealing with the construction of Statutes, namely, that where the interpretation of a Statute is obscure or ambiguous or readily capable of more than one interpretation, light may be thrown on the true view to be taken of it by the aim and provisions of a subsequent Statute. Many authorities have been cited by Mr. Maugham on behalf of the Appellants on this point. He referred to Maxwell on Statutes 464. In *Dore* v. *Gray*, 2 T.R. 358, it was laid down that an Act of Parliament does not alter the law by merely betraying an erroneous opinion of it; but where it is gathered from a later Act that the Legislature attached a certain meaning to certain words in an earlier cognate Act this would be taken as a legislative declaration of its meaning. In the case of the *Earl of Shrewsbury* v. *Scott*, 6 Common Bench, N.S., page 1, Chief Justice Cockburn said at page 180: 'I quite concur in the argument that a mistake as to the state of the law on the part of the Legislature in a private Act of Parliament—, nay, I may say, upon the authority of the case of *Ex parte Lloyd*, 1 Simon N.R. 248, even in a public Act, —and legislation founded on such mistake, would not have the effect of making that the law which the Legislature had erroneously assumed to be so.' In *The Attorney-General* v. *Wood*, [1897] 2 Q.B. 102, Mr. Justice Vaughan Williams in giving judgment is reported to have said (page 110): 'I wish to add that I do not think that the fact that Section 14 of the Finance Act of 1896 contains an enactment in the sense of the construction which I am now putting on Section 5, Sub-section 3, of the Act of 1894 shows that that construction is wrong because, if it were right, the amending Act might be said to be useless. The amending Act may be merely declaratory to clear up doubts, and, even if not so intended, the presence of the Section in the later Act cannot determine the construction of the earlier.'"

In *Commissioners of Inland Revenue* v. *Dowdall O'Mahoney & Co., Ltd.*, 33 T.C. 259, at page 283, Lord Reid said:—

> "The question is therefore narrowed down to this: Does Paragraph 5 of the Schedule to the 1939 Act, reinforced by Paragraph 8, contain or require the implication of an enactment that certain Dominion taxes are to be deductible in computing profits for United Kingdom Excess Profits Tax? I think that the question is a difficult one but I have come to be of opinion that it does not. Paragraph 5 is very misleading but to mislead a taxpayer is not the same thing as to entitle him to relief. It may well be that these Paragraphs show that Parliament was under a misapprehension as to the existing law at the time, but it does not necessarily follow that if Parliament had been correctly informed it would have altered the law."

In the same case, at page 287, Lord Radcliffe observed:—

> "The beliefs or assumptions of those who frame Acts of Parliament cannot make the law."

In *Special Commissioners of Income Tax* v. *Pemsel*, 3 T.C. 53, the question arose whether the general exemptions from Income Tax afforded to charities by Sections 88 and 105 of the Income Tax Act, 1842, were impliedly confined to a narrower range of purposes than those included in the full legal definition of charity by the special exemption afforded by Section 149 to the British Museum. It was argued for the Crown, at page 57:

> "The charitable purposes of the Income Tax Acts cannot be the same as those of the statute of Elizabeth, because there are matters specifically dealt with by the Income Tax Acts which certainly would have come within the terms of the statute of Elizabeth. Section 149, 5 & 6 Vict. c. 35, makes a special exemption in favour of the British Museum, whereas by a decision given in the year 1826, *Trustees of British Museum* v. *White*(2), it had been settled that the British Museum is a charity within the statute of Elizabeth."

This argument was thus dealt with by Lord Herschell, at page 89:—

> "I ought, perhaps, to notice the argument presented to your Lordships, that some more limited meaning of these words is suggested by the provisions in

(1) 13 T.C. 400. (2) 2 Sim. & St. 594.

connection with which they are found, and the specific exceptions contained in the statute. I think that an argument derived from the specific mention of certain subjects in the exemptions found in a Taxing Act is of little weight. Such specific exemptions are often introduced *ex majori cautelâ* to quiet the fears of those whose interests are engaged or sympathies aroused in favour of some particular institution and who are apprehensive that it may not be held to fall within a general exemption."

In the present case it was pointed out by Mr. Borneman, for the Crown, that the provisions in the Finance Acts of 1923, 1924, 1925 and 1926 in regard to the exemption of Irish charities are to be construed as one with the Income Tax Act, 1918, and he referred us to the following passage from the speech of Lord Simon in *Penang and General Investment Trust, Ltd., and Ramsden* v. *Commissioners of Inland Revenue*, 25 T.C. 219, at page 240 :—

"The Appellants, quoting *Ormond Investment Co., Ltd.* v. *Betts*, [1928] A.C. 143 ; 13 T.C. 400, are driven to contend that this is an erroneous assumption made by the Legislature as to the previous state of the law—a contention particularly difficult to sustain in a Finance Act which is to be read with previous Finance Acts as a single code ; but, for the reasons above given, the assumption is correct."

Having regard to the nature of the later enactments here in question, passed as they were to meet the peculiar situation created by the secession of the Irish Free State from the United Kingdom, and designed as they were to preserve until such time as other arrangements were made the exemption theretofore enjoyed by charitable institutions in that part of Ireland, I find it impossible to regard them as additions to or modifications of the Income Tax code which operated by way of necessary implication to restrict the application of the exemption provided for by Section 37 (1) (*b*) to bodies and trusts established in the United Kingdom, if apart from those enactments the exemption was not upon its true construction so restricted. The framers of these enactments used language at least suggestive of a definite view that upon the true construction of Section 37 the exemption would be lost by charities in the Irish Free State unless expressly preserved. If a definite view to that effect is rightly to be imputed to the Legislature, then I think the case would be within the principle stated by Lord Sterndale, M.R., in the *Cape Brandy Syndicate* case[1] that

"subsequent legislation, if it proceed upon an erroneous construction of previous legislation, cannot alter that previous legislation, but if there be any ambiguity in the earlier legislation then the subsequent legislation may fix the proper interpretation which is to be put upon the earlier."

On the other hand, it is perhaps arguable that these enactments may have been the product of nothing more than a doubt as to how, in view of the secession of the Irish Free State from the United Kingdom, charitable institutions in that part of Ireland would stand as regards exemption from Income Tax, and were passed simply and *ex abundanti cautelâ* for the purpose of removing that doubt and preserving the *status quo* ; and if capable of being so explained they could not be regarded as throwing any light on the construction of Section 37. In my view, however, the former explanation is to be preferred to the latter, as I find it difficult to reconcile the proviso to Section 21 of the 1923 Act, which limits its application to cases in which the property producing the income in question was held by the body of trustees concerned on 5th April, 1923, or the language of the repeal

(1) 12 T.C. 358, at p. 373.

(Jenkins, L.J.)

contained in Paragraph 3 of Part II of the Second Schedule to the 1926 Act—

> "Section twenty-one of the Finance Act, 1925, which grants an exemption for charities in the Irish Free State, shall cease to have effect"

—with anything short of a positive assumption or belief that upon the true construction of Section 37 of the 1918 Act charities established in the Irish Free State were definitely not entitled to claim exemption under that Section. Accordingly, I think that the enactments relating to Irish Free State charities, while not directly altering the construction or effect of Section 37 of the Act of 1918, can properly be regarded as providing a legislative interpretation of Section 37 to which recourse may legitimately be had for the purpose of resolving any ambiguity there may be in the construction of Section 37 itself.

Mr. Heyworth Talbot, for the Foundation, contends that there is no such ambiguity, that the language of Section 37 is on the face of it apt to include a body of persons established in any part of the world for charitable purposes only, and that there is no justification for reading into the plain terms of the enactment, in its application to bodies of persons, an implied restriction of its scope to bodies established in the United Kingdom. The main points of his argument may be thus summarised. (1) The expression "body of persons" is not a term of art, as is shown by the wide definition of that expression contained in Section 237 of the 1918 Act, which contains nothing necessarily confining it to bodies constituted in the United Kingdom. Moreover, as appears from Rule 1 of the All Schedules Rules, read in conjunction with Paragraph 1 (*a*) (iii) of Schedule D, a foreign body of persons is a body of persons within the meaning of the Act for the purposes of the charge to tax under Case III of Schedule D. (2) Again, the word "established" is not a word of art. It means no more than "formed with some degree of permanence", and has, for instance, been held satisfied in the case of an unincorporated voluntary association; see *Commissioners of Inland Revenue* v. *Yorkshire Agricultural Society*, 13 T.C. 58, and in particular *per* Atkin, L.J., at page 75. There is no reason for holding that it is not satisfied in the case of a body, such as the Foundation, incorporated under the law of a foreign state. (3) Admittedly the words "for charitable purposes only" must mean "exclusively for purposes which are recognised by the law of the United Kingdom as charitable". But this presents no insuperable difficulty, although it necessarily involves in the case of a foreign body of persons a two-fold inquiry, to ascertain first what the purposes of the body are according to the relevant local law, and, secondly, whether those purposes are charitable under the law of the United Kingdom. The fact that the purposes of the foreign body may be pursued wholly abroad is immaterial, provided that they are of such a character that a trust for their pursuit outside the United Kingdom would be recognised under the law of the United Kingdom as a charitable trust. It is well settled that charitable purposes under our law are not confined to charitable purposes within this realm. See In re *Robinson*, [1931] 2 Ch. 122, which case also shows that our Courts will give effect to a trust for charitable purposes to be carried out abroad even where the trustee is a foreign person or institution outside the jurisdiction of those Courts. (4) There is no room here for the application of the general principle of construction relied on by the Crown and deducible from such cases as *Jefferys* v. *Boosey*, 4 H.L.Cas. 815, *Wallace* v. *Attorney-General*, L.R. 1 Ch. App. 1, and *Colquhoun* v. *Heddon*, 2 T.C. 621, to the effect that general words in an Act of the United Kingdom Parliament, should, unless the Act expressly declares otherwise, be construed as referring only

to persons, matters or things within the jurisdiction of that Parliament and not as purporting to deal with persons, matters or things outside such jurisdiction ; for Section 37 is an exempting Section, and its scope should therefore be regarded as limited and defined by reference to the incidence of the tax from which it provides exemption. If a foreign body suffers under the Act Income Tax of one of the kinds referred to in Section 37, there can be no good reason for construing that Section as excluding it from the exemption merely on the ground that it is a foreign body. (5) The construction contended for on the part of the Foundation not only gives literal effect to Section 37 but produces a rational result in that it makes the exemption coextensive with the liability to tax.

I agree that the general principle deducible from, for example, *Colquhoun* v. *Heddon*[1] cannot of itself provide any sufficient ground for limiting the exemption afforded by Section 37 in the way contended for by the Crown. Where an Act of the United Kingdom Parliament imposes a tax on income arising in the United Kingdom, makes the tax equally exigible whether the person entitled to the income is British or foreign, resident or non-resident, and affords an exemption from the tax to persons fulfilling specified conditions which do not expressly include citizenship of or residence in the United Kingdom, there can in my view be no justification for the implied exclusion from the benefit of the exemption of a foreign non-resident who has suffered, or apart from the exemption would suffer, the tax, and who satisfies all the express requirements of the exempting provision, merely on the ground that he is a non-resident foreigner. In the course of the argument I ventured to put the question whether, if Section 37 had included a provision granting exemption from tax under Schedule D to any blind person, the exemption could be claimed by a blind citizen of a foreign State not resident in the United Kingdom. I understood Counsel for the Crown to concede that my imaginary exemption could be claimed by such foreign and non-resident blind person, but Mr. Stamp distinguished this hypothetical case from the case now before us on the ground that the hypothetical condition of exemption, namely blindness, involved a characteristic which could equally be possessed by persons of all nationalities and in all parts of the world ; whereas the conditions of exemption prescribed by Section 37 as it actually stands involve characteristics which can only be possessed by institutions governed by the laws of the United Kingdom, and are peculiar to those laws. This shows, I think, that any territorial or jurisdictional restriction on the scope of Section 37 must be found in the construction of the Section itself and the objects and conditions of the exemption which it confers rather than in the application of the general restrictive principle to which I have referred.

There is, however, one reason underlying that principle which can, I think, properly be taken into account in reaching any conclusion on the construction of Section 37, and that is the great administrative difficulty which must inevitably attend the world-wide application of the exemption. If any institution in any part of the world can lay claim to the exemption on the ground that it is established for exclusively charitable purposes, adjudication upon foreign claims for exemption will, as Mr. Talbot admits, involve the two-fold process of ascertaining the relevant foreign law as to the purposes which the institution concerned is empowered to pursue and then determining whether those purposes, considered, I suppose, in relation to the manners, customs, beliefs and social conditions obtaining in the foreign country con-

(1) 2 T.C. 621.

(Jenkins, L.J.)

cerned, are charitable purposes within the meaning of our law. This would be liable to give rise in many cases to an abstruse and controversial inquiry, hardly to be answered short of litigation in the Courts. The present case is relatively simple owing to the affinity of United States law to our own, but that is an accidental circumstance, which does not displace the possibility, or indeed probability, of acute difficulty in many other cases. The following passage from the judgment of Lord Cranworth, L.C., in the Succession Duty case of *Wallace* v. *Attorney-General*, L.R. 1 Ch. App. 1, at page 7, is not without relevance here :—

> " By the 2nd section of the Act every disposition of property by reason whereof any person shall on the death of another *become entitled* to any property shall be deemed to confer on the person *so becoming entitled*, a succession, and on that succession the duty is imposed by section 10.
>
> The question, therefore, is whether, where a person domiciled abroad makes a will giving personal property in this country by way of legacy, the legatee is a person *becoming entitled* to that property with the true intent and meaning of the 2nd section. I think not. I think that in order to be brought within that section, he must be a person who becomes entitled by virtue of the laws of this country. Any wider construction would give rise to difficulties hardly to be surmounted. In collecting the duties, the officers of the revenue will in general find no difficulty, supposing the duties to be imposed only on persons entitled under our own laws. The officers know, or must be supposed to know, what those laws are with respect to the persons liable by our laws to the duties to be levied. But who the parties entitled under a foreign will are, is a question which no knowledge of our laws will enable them to solve. It can only be ascertained by evidence in every case showing what the foreign law is and who is entitled under it. In some cases this may admit of little or no doubt, but in others it may be a matter of great difficulty, and in no case can the officers safely act until the rights of parties have been ascertained litigiously."

There is one other general consideration to which I should advert. Counsel for the Crown propounded the proposition that the reason for the exemption afforded to charities by Section 37 was that the Legislature thought fit to forego the tax on income devoted to charitable purposes because income spent on those purposes is spent for the benefit of the public, just as the tax is levied for the benefit of the public, so that the tax foregone goes to increase the benefit derived by the public from the furtherance of the charitable purpose. To this they added the further proposition that the relevant public for the purposes both of tax and of charity is the public in the United Kingdom, and invited the conclusion that the exemption afforded by Section 37 should be held limited to charities benefitting the United Kingdom public, or in other words charities established in the United Kingdom. I can give very little weight to this argument. It is of course axiomatic that no object is held charitable under our law unless it is for the benefit of the community, or, as is sometimes said, for the benefit of the public or a section of the public. One might expect that the community, or public or section thereof, some benefit to whom is held to be an essential ingredient in all charity, should be the community, or public or section thereof, existing in our own country, and not a foreign community or foreign public. But the authorities do not bear this out, for, as Mr. Talbot has shown, there are many instances in which purposes have been recognised as charitable notwithstanding that they were to be pursued wholly abroad. This appears from In re *Robinson*(1) and the cases there cited, and indeed an instance of it is provided by *Pemsel's* case(2) itself. It does not necessarily follow that all purposes which if carried out in, and for the benefit of the inhabitants of, the United Kingdom would be charitable under our law are recognised

(1) [1931] 2 Ch. 122. (2) 3 T.C. 53.

as charitable when carried out in, and for the benefit of the inhabitants of, a foreign country. Indeed there are some which could not well be so recognised, for instance a trust for the improvement of the efficiency of the army of a foreign State, or for the reduction of the national debt of a foreign State. I need not pause to consider which should and which should not be so recognised, or whether the element of public benefit in those which are so recognised should be looked on as consisting in the direct benefit provided for the foreign public concerned or in some secondary and indirect benefit in the shape, for instance, of moral improvement, assumed to be conferred on the public at home. It is here only necessary for me to observe that it cannot be maintained that no purpose is recognised as charitable under our law unless it is carried out in, and for the benefit of the public or some section of the public of, the United Kingdom. This, I think, suffices to dispose of the general proposition I am now considering as an aid to the construction of Section 37.

Turning now to the language and context of the Section itself, I observe, as to the context, that Section 37 is the first of a fasciculus of three sections, of which the second provides exemption for a particular British institution, namely the British Museum, while the third provides exemption for certain friendly societies, trade unions and savings banks, etc., the institutions referred to being unquestionably institutions formed and existing in, and under the laws of, the United Kingdom. Such being the context of the Section as a whole, I observe further that the particular exemption here in question falls under the second of three heads of exemption for which the Section provides. The first head (paragraph (*a*)) exempts

> "the rents and profits of any lands . . . belonging to any hospital, public school or almshouse, or vested in trustees for charitable purposes, so far as the same are applied to charitable purposes only".

I can hardly doubt that the hospitals, public schools or almshouses to whose lands this exemption relates are charitable institutions of those respective descriptions existing and legally recognised as such in the United Kingdom, and I think it is at all events plain that the trustees, to lands vested in whom this exemption refers, are trustees holding the land in question as trustees of charitable trusts taking effect and enforceable under the law of the United Kingdom, whether the purposes of such trusts are to be pursued in the United Kingdom or abroad. The third head, paragraph (*c*), exempts

> "any interest . . . in the names of trustees applicable solely towards the repairs of any cathedral, college, church or chapel, or any building used solely for the purposes of divine worship, and so far as the same are applied to those purposes."

Here, too, I can hardly doubt that the buildings referred to are buildings of those respective descriptions in the United Kingdom, particularly having regard to the special meanings attached to the terms "cathedral" and "college" under our law; and I think it is at all events plain that the trustees in whose names the interest, etc., stands must be trustees of a trust taking effect and enforceable under the law of the United Kingdom. Coming last to the material head of exemption (paragraph (*b*)), I find it extends to any interest, etc.,

> "forming part of the income of any body of persons or trust established for charitable purposes only, or which,"

that is to say, which interest, etc.,

> "according to the rules or regulations established by Act of Parliament, charter, decree, deed of trust, or will, are applicable to charitable purposes only, and so far as the same are applied to charitable purposes only".

(Jenkins, L.J.)

Ex concessis, "charitable purposes" in paragraph (*b*), as also in paragraph (*a*), means purposes which are charitable according to the law of the United Kingdom. "Act of Parliament" clearly means Act of the United Kingdom Parliament. "Charter" clearly means Royal Charter granted by the Sovereign of the United Kingdom. "Decree" clearly means decree of a Court of the United Kingdom. As appears from what I have said regarding the references to trustees in the other two paragraphs, I think that "trust" and "deed of trust" in this paragraph must be taken as referring to trusts taking effect and enforceable under the law of the United Kingdom, and I think that similarly "will" must in the context mean a will so taking effect and enforceable.

Mr. Heyworth Talbot was, I think, disposed to concede all this, at all events to the extent of agreeing that the second branch of the exemption, introduced by the words "or which", could hardly be applied to an institution formed, resident and operating wholly outside the United Kingdom, governed by regulations deriving their validity wholly from the law of a foreign country, and in no way subject to the jurisdiction or control of our Courts. But he submitted nevertheless that this did not destroy the claim of the Foundation under the first branch of the exemption as a "body of persons . . . established for charitable purposes only". His argument depended to some extent on splitting up the first branch of the exemption, ignoring the words "or trust"; taking the phrase "body of persons" and claiming that the Foundation answered that description; then taking the word "established" and claiming that the Foundation answered that description also; and finally taking the phrase "for charitable purposes only" and seeking to satisfy that condition by showing that the objects of the Foundation as defined in its certificate of incorporation would, if contained in an English trust deed or memorandum of association, be held by our Courts to be exclusively charitable objects.

With respect, I think this is a wrong method of approach. The phrase to be construed is the whole phrase "body of persons or trust established for charitable purposes only", and it must be construed in its context. Whether the claim for exemption is made on behalf of a body of persons or on behalf of a trust, the body or trust must be shown to be established for charitable purposes only, and that requirement must have the same quality in the case of a body of persons as it has in the case of a trust. 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 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.

I am fortified in this conclusion by the consideration that an exemption substantially in this form has appeared in Income Tax legislation ever

since 1799, at which date there was no question of taxing, and therefore none of exempting, non-resident foreigners. I also find some support for my view in the administrative difficulties attending the other construction, to which I have already adverted, and to which I might add the difficulty of ascertaining whether a foreign allegedly charitable institution is in fact applying its income in accordance with its avowed objects. Finally, if I have rated the case against the Foundation too high, I think it can hardly be denied that the question is left at least in a state of ambiguity which can properly be resolved by reference to the legislative interpretation placed on Section 37 by the above-cited enactments concerning charities in the Irish Free State.

My conclusion on this part of the case makes it strictly unnecessary for me to express any view on the question whether the objects of the Foundation as expressed in its certificate of incorporation are exclusively charitable purposes according to the law of the United Kingdom. As I understood, the charitable character of the Foundation's objects was only challenged on the part of the Crown with respect to clause 2b of the certificate of incorporation. It was contended by Counsel for the Crown that the object stated in clause 2b

> "To promote any other scientific, educational or charitable purposes"

was not necessarily or exclusively a charitable object. But the evidence of New York law accepted by the Special Commissioners was to the effect that this clause was void and should be ignored as mere surplusage. It was sought to surmount this evidence by saying that it was merely an expression of the opinion of the two New York lawyers who gave evidence on the matter. These witnesses deposed to the content of the New York Membership Corporations Law, and in particular section 10 of that law, which provides that:—

> "Five or more persons may become a membership corporation for any lawful purpose, or for two or more such purposes of a kindred or incidental nature, except a purpose for which a corporation may be created under any general law other than this chapter".

Their evidence as to the effect of that provision was expressed in these terms:—

> "To be valid, therefore, all the purposes of a corporation formed under the Membership Corporations Law must be of a kindred or incidental nature".

They expressed the opinion that according to this test clause 2b was void on the ground that the purposes stated therein were not of a nature kindred or incidental to the primary purpose set out in clause 2a. They added, however, that the certificate of incorporation, apart from the contents of clause 2b, which were void, was not otherwise affected and remained valid.

The Special Commissioners' finding on this part of the case was in these terms:—

> "The construction, meaning and effect of the certificate of incorporation should, in our view, be determined by reference to the law of the State of New York. We accept the evidence given before us that under the law of that State the provisions of sub-paragraph b of paragraph 2 of the Certificate are void and inoperative, leaving the provisions of sub-paragraphs a and c as the only operative parts of the paragraph. The provisions of sub-paragraph c are machinery provisions and the substantive purposes of the Foundation are accordingly to be found in sub-paragraph a. There can be no doubt, in our view, that the purposes there set out are charitable purposes only according to English law."

(Jenkins, L.J.)

It was urged on the part of the Crown that this finding should be rejected on the ground that the witnesses' evidence to the effect that the purposes stated in clause 2b were not of a nature kindred or incidental to the primary purpose in clause 2a was mere matter of opinion and not evidence of New York law. I cannot accept this objection. In my view it is well within the competence of a witness as to the operation of a given instrument under foreign law to state the content of the relevant law and to add his opinion as to the effect attributable under that law to the instrument in question. No doubt his opinion might be challenged or displaced by the contrary opinion of some other competent witness. But that is a matter of weight, not admissibility, and the Special Commissioners having accepted the uncontradicted evidence of the witnesses of New York law in the present case, I can see no reason for disturbing their finding.

This cannot, however, affect the result ; and answering as I do the first question in the case adversely to the Foundation, I hold that this appeal fails and should be dismissed.

Hodson, L.J.—The question raised on this appeal is whether the Camille and Henry Dreyfus Foundation, Inc. is exempt from Income Tax.

The Foundation has been, since the year 1946, in receipt of royalties from British Celanese, Ltd., a company resident in the United Kingdom, from which Income Tax has been deducted at source. The Foundation claims under the provisions of Section 37 (1) (*b*) of the Income Tax Act, 1918, as "a body of persons . . . established for charitable purposes only" to recover the tax from the Commissioners of Inland Revenue. The claim has been resisted on the ground that the Foundation is not established for charitable purposes only within the meaning of Section 37 and also on the ground that the Foundation is not established in the United Kingdom and accordingly is not within the exemption whether or not it is a charity.

The Commissioners for Special Purposes decided in favour of the Foundation that it was established for charitable purposes only, but decided against the Foundation on the second point. In deciding the second point they followed the decision of Lawrence, J., in *Commissioners of Inland Revenue* v. *Gull*, 21 T.C. 374, who in the course of his judgment had said (at page 378)

> "I feel constrained to hold that the exemption applies only to the income of bodies of persons or trusts established in the United Kingdom."

On appeal Wynn-Parry, J., arrived at the same conclusion, feeling, as I think rightly, that he should follow the direction of law which Lawrence, J., had given after argument and full consideration upon the point, even though the conclusion at which Lawrence, J., arrived in that particular case would have been the same had the direction been otherwise, for he upheld the finding of the Commissioners that the trust in question was established in the United Kingdom.

Mr. Heyworth Talbot's argument is in essence a simple one. He says that the words used are "any body of persons" without geographical or other limitation save that which is contained in the words "established for charitable purposes only". He relies on the general principle that the words must be taken as they stand with nothing added to them. He asks with some force why in principle should not his clients, if they are charities, be exonerated by the United Kingdom Legislature in the same way as charities established in the United Kingdom are exonerated. It would, he says, be capricious for Parliament to act in an inconsistent manner when United Kingdom charities on the one hand and foreign charities on the

other are concerned and he maintains that the plain words of the Act lead to no such capricious conclusion.

So far as *Gull's* case(1) is concerned he relies on Lawrence, J.'s decision in so far as the learned Judge rejected many of the arguments then and now advanced by the Crown, but he says that the learned Judge erred in feeling himself constrained by the language of what have been called the Irish Free State sections in later Income Tax Acts, to find in favour of the Crown on this point. These sections are Section 21 of the Finance Act, 1923, Section 32 of the Finance Act, 1924, and Section 21 of the Finance Act, 1925, which confer exemption on the income of a

> "body of persons or trust established in the Irish Free State for charitable purposes only".

Mr. Talbot argued that these sections were either passed *ex abundanti cautelâ* or on an erroneous assumption as to the effect of Section 37 of the Income Tax Act, 1918. Section 21 of the Finance Act, 1923, has been repealed by the Statute Law Revision Act, 1950, having ceased to have effect by virtue of Paragraph 3 of Part II of the Second Schedule to the Finance Act, 1926. The presence of Section 21 of the Act of 1923 cannot, in my opinion, be explained on the ground that it was inserted *ex abundanti cautelâ*, particularly having regard to the fact that it has now been repealed, having previously ceased to have effect as above stated. This treatment of the Irish Free State charities by the Legislature is not consistent with an opinion held by Parliament that these charities were always within the scope of Section 37 of the Act of 1918 and that the inclusion of Irish Free State charities in the later legislation can be explained in the same way as Lord Herschell dealt with the special exemption in favour of the British Museum contained in the Income Tax Act, 1842, when he said in *Special Commissioners of Income Tax* v. *Pemsel*, 3 T.C. 53, at page 89,

> "Such specific exemptions are often introduced *ex majori cautelâ* to quiet the fears of those whose interests are engaged or sympathies aroused in favour of some particular institution and who are apprehensive that it may not be held to fall within a general exception."

Section 21 of the 1923 Act must, I think, be taken as a legislative interpretation of Section 37 of the Act of 1918, which can be used if the language of the latter is ambiguous: see *Ormond Investment Co., Ltd.* v. *Betts*, 13 T.C. 400, at page 429, *per* Lord Buckmaster, approving Lord Sterndale, M.R., in *Cape Brandy Syndicate* v. *Commissioners of Inland Revenue*, 12 T.C. 358, at page 373.

Mr. Heyworth Talbot argued that on the true construction of Section 37 of the Income Tax Act, 1918, foreign charities were plainly within its scope, and sought to dispose of the Irish Free State legislation by resort to the erroneous assumption argument, which has found expression in a number of tax cases, including those last cited and culminating in *Commissioners of Inland Revenue* v. *Dowdall O'Mahoney & Co., Ltd.*(2), [1950] A.C. 401. As to this argument a warning note was sounded by Lord Simon in *Penang and General Investment Trust, Ltd. and Ramsden* v. *Commissioners of Inland Revenue*, 25 T.C. 219, at page 240, where he said:

> "The Appellants, quoting *Ormond Investment Co., Ltd.* v. *Betts*, [1928] A.C. 143; 13 T.C. 400, are driven to contend that this is an erroneous assumption made by the Legislature as to the previous state of the law—a contention particularly difficult to sustain in a Finance Act which is to be read with previous Finance Acts as a single code."

(1) 21 T.C. 374. (2) 33 T.C. 259.

(Hodson, L.J.)

I find it impossible to say that the language employed in Section 37 of the Act of 1918 so clearly carries the interpretation contended for by the Appellants that the erroneous assumption argument ought to be entertained in this case.

On the other hand, although I would follow the legislative interpretation to be found in the Irish Free State sections if there were a real ambiguity, I base my judgment on the interpretation of the Section itself in its context against the background of its own history. Taking the phrase as a whole, that is to say "any body of persons or trust established for charitable purposes only", the inclusion of the word "trust" denotes something characteristic of our law, and the expression "body of persons" should not be construed in isolation. When one looks at the following words, "Act of Parliament, charter, decree, deed of trust, or will", all of these, with the exception of "will", point to the law of the United Kingdom. "Act of Parliament" must mean Act of the Imperial Parliament; "charter" must mean charter of the United Kingdom; "decree" must mean decree of the Courts of this country; and "deed of trust" must refer to a trust constituted and enforced by our law. In my opinion, the language of the other parts of Section 37, both those which precede and those which follow sub-paragraph (*b*), lead to the same conclusion, as also do Sections 38 and 39, part of the same group of sections brought together in the Act under the cross-heading "Relief to Charities, Friendly Societies, &c." The word "charity" itself has a special significance in English law and nothing in these Sections points to foreign charities.

Sections 37, 38 and 39 are brought together in the 1918 Act, having been collected from the 1842 Income Tax Act where they appeared in different parts of the Act. These provisions replace those contained in the Act of 1799, passed at a time when there was no question of either taxing or giving exemption to non-resident foreigners. Section 5 of this Act provided as follows:—

> "Provided also, and be it further enacted, That no Corporation, Fraternity, or Society of Persons established for charitable Purposes only, shall be chargeable under this Act, in respect of the Income of the Corporation, Fraternity or Society."

As I indicated above, I rest my judgment on the interpretation of the Section in its context and against its historical background, but I find some support for the conclusions which I have reached in the practical difficulties involved in the contrary view. The Commissioners of Inland Revenue would indeed be set a difficult task if they had to apply the law of any part of the civilised world in order to ascertain the purposes for which a particular body of persons was established before applying the law of this country as to whether those purposes were charitable within the meaning of our law. Again, the difficulty of insisting on proof that income had been applied for charitable purposes only would be great.

The observations of Lord Cranworth, L.C., in *Wallace* v. *Attorney-General*, L.R. 1 Ch. App. 1, at page 7, cited by Jenkins, L.J.(1), are I think relevant in this connection.

I agree therefore that the appeal fails, although, for the reasons given by the other members of the Court, I am of opinion that the finding of the Special Commissioners that the objects of the Foundation are exclusively charitable as understood by our law is not assailable.

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(1) *See* page 150 *ante*.

Mr. J. H. Stamp.—The appeal will be dismissed with costs?

Sir Raymond Evershed, M.R.—I think that follows.

Mr. Philip Shelbourne.—Yes, unless you consider that your decision on the charity point being in our favour would allow for some partial remission of costs. That was the conclusion which your Lordships came to in *Union Corporation, Ltd.* v. *Commissioners of Inland Revenue*(1), where, as your Lordship will remember, there were two points taken.

Sir Raymond Evershed, M.R.—The charity point has taken up relatively a small amount of time, but in *Union Corporation* there was a very big matter.

Mr. Shelbourne.—It is true that we did not delay your Lordships quite so long in this case.

Sir Raymond Evershed, M.R.—On the whole, we think they should follow the event. The appeal is dismissed with costs.

Mr. Shelbourne.—May I ask for leave on behalf of the Foundation to appeal to the House of Lords?

Sir Raymond Evershed, M.R.—Unless Mr. Stamp has anything to say, we would be disposed to grant you leave.

Mr. Stamp.—It is not the practice of the Revenue to contest these applications.

Sir Raymond Evershed, M.R.—Then we give you leave.

Mr. Shelbourne.—Thank you, my Lord.

The Foundation having appealed against the above decision, the case came before the House of Lords (Lords Morton of Henryton, Porter, Normand, Keith of Avonholm and Somervell of Harrow) on 5th and 6th July, 1955, when judgment was reserved. On 28th July, 1955, judgment was given unanimously in favour of the Crown, with costs.

Mr. F. Heyworth Talbot, Q.C., and Mr. Philip Shelbourne appeared as Counsel for the Foundation, and the Attorney-General (Sir Reginald Manningham-Buller, Q.C.), Mr Roy Borneman, Q.C., Sir Reginald Hills and Mr. E. B Stamp for the Crown.

Lord Morton of Henryton.—My Lords, the Appellant Foundation was incorporated under the Membership Corporations Law of the State of New York in the United States of America. In the years 1946-47 to 1950-51 inclusive the Foundation received substantial royalties from British Celanese, Ltd. It is not in doubt that the Foundation is liable to pay Income Tax on these royalties under Schedule D unless it can establish that it is entitled to exemption under the provisions of Section 37 of the Income Tax Act, 1918. That Section is in the following terms:—

> "37.—(1) Exemption shall be granted—
>
> (*a*) from tax under Schedule A in respect of the rents and profits of any lands, tenements, hereditaments, or heritages belonging to any hospital, public school or almshouse, or vested in trustees for charitable purposes, so far as the same are applied to charitable purposes only: Provided that any

(1) 34 T.C. 207.

(Lord Morton of Henryton.)

> assessment upon the respective properties shall not be vacated or altered, but shall be in force and levied, notwithstanding the allowance of any such exemption; (*b*) from tax under Schedule C in respect of any interest, annuities, dividends or shares of annuities, and from tax under Schedule D, in respect of any yearly interest or other annual payment forming part of the income of any body of persons or trust established for charitable purposes only, or which, according to the rules or regulations established by Act of Parliament, charter, decree, deed of trust, or will, are applicable to charitable purposes only, and so far as the same are applied to charitable purposes only; (*c*) from tax under Schedule C in respect of any interest, annuities, dividends or shares of annuities, in the names of trustees applicable solely towards the repairs of any cathedral, college, church or chapel, or any building used solely for the purpose of divine worship, and so far as the same are applied to those purposes."

The Foundation claims that it is a body of persons established for charitable purposes only and therefore comes exactly within the words of Subsection (1) (*b*) of Section 37. It is not in dispute that the Foundation is established in the United States of America, and the first question which arises for decision is whether, as the Foundation contends, the words just quoted cover a body of persons or trust "established for charitable purposes only" in any part of the world, or are limited, as the Crown contends, to a body of persons or trust established for the like purposes in the United Kingdom. If the former view is correct, a further question will arise, namely, whether the objects of the Foundation, as expressed in its certificate of incorporation, are exclusively charitable purposes. It has rightly been conceded on behalf of the Foundation that this question has to be decided according to the law of England.

The first question was considered by Lawrence, J., in the case of *Commissioners of Inland Revenue* v. *Gull*, 21 T.C. 374. That learned Judge felt himself constrained, by reason of the terms of certain later enactments, to hold that the exemption afforded by Section 37 (1) (*b*)

> "applies only to the income of bodies or trusts established in the United Kingdom",

although he decided in favour of the taxpayer on the ground that the trust there in question was in fact established in the United Kingdom. The later enactments which so constrained the learned Judge are referred to by Jenkins, L.J., in his judgment in the present case, in terms which I gratefully adopt[1]:—

> "The consideration which Lawrence, J., regarded as constraining him to construe Section 37 as he did was the legislative interpretation placed on Section 37 by Section 21 of the Finance Act, 1923, which provided for the exemption of charities in the Irish Free State in respect of Income Tax for the year 1923-24, and by Section 32 of the Finance Act, 1924, and Section 21 of the Finance Act, 1925, which respectively provided for a like exemption for the years 1924-25 and 1925-26, 1926-27 and 1927-28, and finally by the Finance Act, 1926, Section 23, and Part II of the Second Schedule to that Act, which provided under Paragraph 3 of the latter that 'Section twenty-one of the Finance Act, 1925, which grants an exemption for charities in the Irish Free State shall cease to have effect.' To appreciate the force of this consideration it is necessary to read at length Section 21 of the Finance Act, 1923, which is in these terms:—
>
> 'Subject as hereinafter provided, section thirty-seven of the Income Tax Act, 1918 (which grants exemption in respect of charities), shall, in the case of rents and profits of any lands, tenements, hereditaments, or heritages belonging to any hospital, public school, or almshouse in the Irish Free State, or vested in trustees in the Irish Free State for charitable purposes, and in the case of a body of persons or trust established in the Irish Free State for charitable purposes only, and in the case of income

[1] *See* pages 144–5 *ante*.

which according to rules or regulations established by Act of Parliament, charter, decree, deed of trust or will in the Irish Free State, is applicable to charitable purposes only, or which, in the names of trustees in the Irish Free State, is applicable solely towards the repairs of any cathedral, college, church or chapel, or any building used solely for the purpose of divine worship, apply, as respects income tax chargeable for the year 1923-24, as if the Irish Free State had not been constituted: Provided that this section shall not apply except where the lands, tenements, hereditaments, or heritages belonged to the hospital, public school, or almshouse, or were vested in the trustees, on the fifth day of April, nineteen hundred and twenty-three, or the interest, annuities, dividends, shares of annuities, yearly interest or other annual payment arise from investments which were held by the body of persons, trust, or trustees, or were subject to rules or regulations as aforesaid, on the fifth day of April, nineteen hundred and twenty-three.'

It is clear that for the purposes of this Section and the subsequent legislation on the same topic it was assumed that the exemption afforded by Section 37 to bodies of persons or trusts established for charitable purposes only was limited to bodies of persons or trusts established in the United Kingdom, and that the secession of the Irish Free State from the United Kingdom would consequently have the effect of depriving bodies of persons or trusts established in the Irish Free State of the exemption in the absence of legislation continuing it in their favour."

The Foundation's claim to exemption under Section 37 (1) (*b*) was rejected by the Special Commissioners. They felt that they were bound by the decision of Lawrence, J., in *Gull's* case(1), and accordingly held that the exemption applied only to the income of bodies of persons or trusts established in the United Kingdom. Wynn-Parry, J., took the same view. The Court of Appeal, not being bound by *Gull's* case, considered the matter fully, and dismissed the appeal. The main points of the argument presented to the Court of Appeal by Mr. Heyworth Talbot were summarised by Jenkins, L.J., in his judgment. The argument followed the same lines in this House and Counsel accepts that summary as being fair and accurate.

My Lords, the question now before the House is one which turns upon the language of the relevant Statute. 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, and your Lordships have had the advantage of reading and considering three full and clear judgments delivered in the Court of Appeal, expressing this view and dealing very fully with the argument presented by Mr. Heyworth Talbot in that Court and in your Lordships' House. 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.

I shall only add that if I had been of opinion that the words in question were

" open to two perfectly clear and plain constructions ",

to quote Lord Buckmaster in *Ormond Investment Co., Ltd.* v. *Betts*(2), [1928] A.C. 143, at page 154, I should have felt no hesitation in deciding that the Crown's construction gave effect to the intention of the Legislature, having regard to the language of the later enactments to which I have already referred.

(1) 21 T.C. 374. (2) 13 T.C. 400, at p. 428.

(Lord Morton of Henryton.)

As your Lordships did not find it necessary to call upon Counsel for the Respondents to present any argument, I express no opinion upon the question whether the objects of the Foundation are exclusively charitable purposes according to the law of the United Kingdom. This question does not arise if your Lordships agree with my opinion upon the first question, but the Special Commissioners answered it in the affirmative, and the Court of Appeal saw no good reason for disturbing that finding.

I move that the appeal be dismissed with costs.

Lord Porter.—My Lords, I agree with the opinion which has just been expressed by the noble and learned Lord on the Woolsack; and I also agree with the opinion, about to be expressed, of my Lord Normand, which I have had an opportunity of reading.

Lord Normand.—My Lords, I agree with the speech delivered by my noble and learned friend on the Woolsack.

I have only a few observations to add. They are prompted by a passage in the judgment of the Master of the Rolls on the word "trust". He says[1] that in Section 37 (1) (*b*) of the Income Tax Act, 1918,

> "the word 'trust' is a word peculiarly referable to our own system of law. It is true that to other countries, which have adopted our own legal system and essential characteristics, the word 'trust' would have a precise and certain significance. But if the Foundation's argument is sound, the formula in question should have a universal application so that the term 'body of persons or trust' would be intelligible in reference to countries other than those which have embraced our legal conceptions."

It seems that in this passage "our own system of law" and "our legal conceptions" must mean the English system of law and English legal conceptions. He says elsewhere[2], following the same train of ideas, that it is

> "a significant characteristic of our system that to the Attorney-General, representing the Crown as *parens patriae*, belongs the right and duty of invoking the powers of the Courts to secure the due execution of charitable trusts",

and there it is clearly the English system that he has in mind, for it goes without saying that the Attorney-General has no right to invoke the powers of the Courts beyond the boundary of England, and in Scotland the Lord Advocate has no general right or duty to intervene comparable to the right and duty of the Attorney-General in England.

It should be beyond doubt that Scottish trusts are "trusts" within the meaning of that term as used in Section 37 (1) (*b*). The history of the origin and development of the law of trusts in Scotland is not at all the same as the history of the origin and development of the law of trusts in England, and since the term "trusts" applies *proprio vigore* and without any interpretation clause to Scottish trusts, it must be understood in a sense which embraces trusts under both systems of law, and must not be held to connote any specialties of the English law. For this reason it must cover the case in which a fund is held as their property in law by persons who are directed to hold it, subject to purposes which operate as a qualification of their rights and constitute a burden on the property preferable to all claims by or through them, and subject also to a reversionary right remaining with the truster, his heirs and assignees, so far as the estate is not exhausted by the purposes. I do not put forward this as a definition of "trust" but it is a description of a typical trust according to Scots law, and it contains, I believe, nothing repugnant to the English conception of trust. If, however, "trust" must be understood in so general a sense as this, it may well be

(1) *See* page 137 *ante*. (2) *See* page 135 *ante*.

(Lord Normand.)

impossible to deny that it is a term which would be intelligible in reference to many other systems of law which do not derive from the law of England.

I respectfully accept the statement of Jenkins, L.J.(1), that

> "'trust' . . . must be taken as referring to trusts taking effect and enforceable under the law of the United Kingdom".

This statement of the meaning of "trust" depends on the context of Section 37, and not upon the connotation of the word "trust" alone.

I have dealt with this point at greater length than is necessary for the purpose of deciding this appeal, because difficulty enough has already been created for the Courts in Scotland by the duty to apply characteristically English law in determining whether a Scottish trust is for the purpose of Income Tax a charitable trust, and it would be a great misfortune if any shadow of suspicion were to arise that a Scottish trust could not enjoy the benefits of Section 37 (1) (*b*) unless it possessed the special characteristics of a trust under the law of England.

Lord Keith of Avonholm.—My Lords, I agree that this appeal fails, for the reasons stated by my noble and learned friend on the Woolsack. I would only add that I concur in the observations made by my noble and learned friend, Lord Normand.

Lord Somervell of Harrow (read by Lord Keith of Avonholm).—My Lords, I have had the advantage of reading the opinion that has just been delivered by my noble and learned friend on the Woolsack. I agree with it and do not desire to add anything to it.

Questions put:

That the Order appealed from be reversed.

The Not Contents have it.

That the Order appealed from be affirmed and the appeal dismissed with costs.

The Contents have it.

[Solicitors:—Linklaters & Paines; Solicitor of Inland Revenue.]

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(1) *See* page 152 *ante*.

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