

IN THE PRIVY COUNCIL

No. 19 of 1968

O N A P P E A L
FROM THE COURT OF APPEAL OF THE SUPREME
COURT OF JUDICATURE OF GUYANA

B E T W E E N :-

PETER STANISLAUS D'AGUIAR
(Appellant)
Appellant

- and -

THE COMMISSIONER OF INLAND REVENUE
(Respondent)
Respondent

R E C O R D O F P R O C E E D I N G S

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
6 - DEC 1971
25 RUSSELL SQUARE
LONDON W.C.1

Clifford-Turner & Co.,
11, Old Jewry,
London, E.C.2.

Charles Russell & Co.,
37, Norfolk Street,
London, W.C.2.

Solicitors for the Appellant

Solicitors for Respondent

O N A P P E A L
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R E C O R D O F P R O C E E D I N G S
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DOCUMENT TRANSMITTED TO THE PRIVY
COUNCIL BUT NOT REPRODUCED

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O N A P P E A L

FROM THE COURT OF APPEAL OF THE SUPREME
COURT OF JUDICATURE OF GUYANA

B E T W E E N :-

PETER STANISLAUS D'AGUIAR

(Appellant)
Appellant

- and -

10

THE COMMISSIONER OF INLAND REVENUE

(Respondent)
Respondent

R E C O R D O F P R O C E E D I N G S

No. 1

NOTICE OF APPEAL TO JUDGE IN CHAMBERS

In the Supreme
Court of
Guyana

20

IN THE SUPREME COURT OF BRITISH GUIANA

APPEAL TO JUDGE IN CHAMBERS

No. 1010 of 1964 DEMERARA

IN THE MATTER OF THE INCOME TAX ORDINANCE

No. 1
Notice of
Appeal to
Judge in
Chambers,
28th May, 1964.

B E T W E E N :-

PETER STANISLAUS D'AGUIAR,
Appellant,

- and -

THE COMMISSIONER OF INLAND REVENUE,
Respondent.

30

TAKE NOTICE that the abovenamed Peter Stanislaus D'Aguiar intends to appeal against the decision of the Board of Review dated the 28th April, 1964, and given to the Appellant's solicitor on the 6th May, 1964, and the decision of the Commissioner given on the 30th July, 1963.

In the Supreme
Court of
Guyana

No. 1
Notice of
Appeal to
Judge in
Chambers,
28th May,
1964.
(Contd.)

AND FURTHER TAKE NOTICE that you are required to attend a Judge in Chambers at the Victoria Law Courts, Georgetown, Demerara, on the day and at the time to be notified to you by the Registrar on the hearing of an appeal by the said Peter Stanislaus D'Aguiar against the said decision of the Board of Review and the said decision of the Commissioner.

AND FURTHER TAKE NOTICE that it is the intention of the said Peter Stanislaus D'Aguiar to attend this appeal by Counsel and to apply notwithstanding the lapse of the prescribed period that the appeal against the said assessment of the Commissioner be proceeded with if the appeal from the decision of the Board of Review is not maintainable.

10

THE GROUNDS OF APPEAL are as follows:-

1. The Appellant repeats and relies on the facts and reasons set out in the Notice of Appeal to the Board of Review dated 7th August, 1963.

20

2. The Appellant is aggrieved by the decision of the Board of Review alternatively by its failure to give a "positive decision" or to make any order under section 56D(ii) of the Ordinance.

3. The Board took extraneous matter into consideration to wit the opinion of the Solicitor General.

4. The Secretary of the Board purported to confirm by letter dated 30th April, 1964, the Commissioner's assessment by stating that "The Commissioner's assessment remained confirmed as the Board was unable to arrive at a positive decision".

30

5. The Citizens Advice and Aid Service is a charity within the meaning of section 8 of the Civil Law Ordinance, Chapter 2 and is accordingly a charitable institution, organisation or endowment of a public character within the meaning of section 53(3) of the Income Tax Ordinance.

6. There is no provision in the Income Tax Ordinance or in any law applicable to charities in British Guiana requiring all of its objects to be charitable in order to qualify as a charitable

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3.

institution, organisation or endowment of a public character under section 53(3) aforesaid.

In the Supreme
Court of
Guyana

7. All the objects of the Citizens Advice and Aid Service are in any event solely charitable.

No. 1
Notice of
Appeal to
Judge in
Chambers,
28th May,
1964.
(Contd.)

10

8. The disallowance by the Commissioner of the sum of ~~£~~4,200:- paid by the Appellant under the Deed of Covenant dated 23rd May, 1961, to the said Service, and the assessment of income tax in the sum of ~~£~~2,960:- in respect thereof are erroneous in point of law.

Dated the 28th day of May, 1964.

H.W. de Freitas

Solicitor for the said PETER
STANISLAUS D'AGUIAR

The said solicitor's address for service is at the office of Cameron & Shepherd, 2 High Street, Newtown, Georgetown.

In the Supreme
Court of
Guyana

No. 2

STATEMENT OF FACTS

No. 2
Statement of
Facts,
10th July,
1964.

PETER STANISLAUS D'AGUIAR

v

THE COMMISSIONER OF INLAND REVENUE

The Appellant, Peter S. D'Aguiar, submitted a Return of his income for the Year of Assessment 1962, that is to say, in respect of the year of income ended 31st December, 1961 on the 28th July, 1962.

10

A copy of the aforementioned return is hereunto annexed marked "A(0)".

2. The Appellant returned income and made claims for allowances as follows:-

Head Bi -

Salary as a Member of Legislature	£	717.74	20
Less claim for Legislative secretary		400.00	
		<u>£</u> 317.74	

Head Bii -

Salary from D'Aguiar Bros Ltd.		14,400.00	
Director's Fees from Bank Breweries Ltd.		3,600.00	30
Director's Fees from Hand-in-Hand Insurance Co. Ltd.		323.44	
		<u>18,323.44</u>	

Less Payments under Deeds of CovenantIn the Supreme
Court of
Guyana

	Barclays Bank for various charitable organisations	£2,000.00		
	The Convent of Mercy	1,000.00		
10	Citizens Advice and Aid Service	4,200.00	7,200.00	11,123.44
	<u>Head Ci -</u> Dividends (self and wife)		31,883.25	
	Interest on Debentures		927.00	32,810.25
	<u>Head Cii -</u> Trinidad & Tobago Bonds Interest (Wife)			460.00
20				<u>44,711.43</u>
	<u>Less Allowances</u> Self and Wife Children Insurance Premiums	1,400.00 600.00 3,252.59		5,252.59
	Chargeable Income			<u>£39,458.84</u>

No. 2
Statement of
Facts,
10th July,
1964.
(Contd.)

30 3. In the examination of the Appellant's Return the Commissioner of Inland Revenue by letter dated 24th August, 1962, informed the Appellant, inter alia, that his claim for \$4,200.00 paid to the Citizens' Advice and Aid Service under a Deed of Covenant submitted with his return could not be allowed as a deduction since that body was not a charitable institution for income tax purposes. At the same time, he was asked to submit his receipts in support of payments made under deed to the Convent of Mercy.

In the Supreme
Court of
Guyana

Copies of the aforementioned letter and Deed of Covenant in respect of the Citizens Advice and Aid Service are hereunto annexed marked "A(i)" and "A(ii)" respectively.

No. 2
Statement of
Facts,
10th July,
1964.
(Contd.)

4. By letter dated 28th September, 1962, the Appellant stated, inter alia, that he understood that the Citizens' Advice and Aid Service was being considered and would in fact receive the Commissioner's favourable consideration. He did not submit his receipts in support of payments made under deed to the Convent of Mercy. 10

A copy of the aforementioned letter is hereunto annexed marked "B".

5. The Commissioner disallowed the Appellant's claim of \$4,200 and \$1,000 for contributions made under deed to the Citizens' Advice and Aid Service and the Convent of Mercy respectively and his claim of \$400.00 for "Legislative Secretary", and on the 25th October, 1962, assessed the Appellant on a chargeable income of \$45,062. A computation was sent to the Appellant along with a Notice of Assessment. 20

Copies of the aforementioned computation and Notice of Assessment are hereunto annexed marked "C(i)" and "C(ii)" respectively.

6. By letter dated 21st December, 1962, Messrs. Cameron and Shepherd, acting as Solicitors for the Appellant, objected to the Assessment on the ground that \$400.00 paid as salary to his Legislative Secretary and the amounts of \$4,200 and \$1,000 paid under deed to the Citizens' Advice and Aid Service and the Convent of Mercy are admissible deductions and accordingly should be allowed. 30

A copy of the aforementioned letter is hereunto annexed marked "D".

7. By letter dated 11th January, 1963, the Appellant's letter of objection was acknowledged by the Commissioner.

A copy of the aforementioned letter is hereunto annexed marked "E". 40

7.

8. By letter dated 23rd February, 1963, the Appellant was asked, inter alia, to submit his receipt in support of the payment of \$1,000 made under deed to the St. Joseph's Convent of Mercy and to give reasons why the amount paid to his Legislative Secretary was not reported to the Commissioner under the provisions of Section 41(2) of the Income Tax Ordinance, Chapter 299.

In the Supreme
Court of
Guyana

No. 2
Statement of
Facts,
10th July,
1964.
(Contd.)

10 A copy of the aforementioned letter is here-
unto annexed marked "F".

9. By letter dated 5th March, 1963, Messrs. Cameron and Shepherd, acting as Solicitors for the Appellant, replied stating that the Appellant was not aware that he had to report to the Commissioner the amount paid to his Legislative Secretary, and also submitted a letter from the Convent of Mercy acknowledging receipt of the amount of \$1,000 paid under deed.

20 A copy of the aforementioned letter is here-
unto annexed marked "G".

10. The Commissioner, after due consideration of the Appellant's objection, reduced the assessment by chargeable income of \$1,400, that is to say by allowing the Appellant his claims of \$400 for salary to a Legislative Secretary and \$1,000 as payment under deed to the Convent of Mercy, and informed the Appellant accordingly by letter dated 10th July, 1963.

30 A copy of the aforementioned letter is here-
unto annexed marked "H(i)".

40 11. The Commissioner did not allow the Appel-
lant's claim of \$4,200 in respect of payment
under deed to the Citizens' Advice and Aid
Service on the ground that that organisation is
not an ecclesiastical, charitable or educational
institution, organisation or endowment of a
public character within the meaning of Section
53(3) of the Income Tax Ordinance, as amended by
Section 7(i) of the Income Tax (Amendment)
Ordinance No. 4 of 1958. The Appellant there-
fore appealed to the Board of Review by Notice
of Appeal dated 7th August, 1963.

In the Supreme
Court of
Guyana

No. 2
Statement of
Facts,
10th July,
1964.
(Contd.)

A copy of the aforementioned Notice is here-
unto annexed marked "H(ii)".

12. The aforementioned appeal was heard by the
"Board of Review" who gave a decision in writing.

A copy of the aforementioned decision is
hereunto annexed marked "H(iii)".

CITIZENS ADVICE AND AID SERVICE

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13. By letter dated 14th March, 1963, Messrs.
A.H. Thorne and C.H. Da Silva in their capacity
as honorary directors applied to the Commissioner
on behalf of the Citizens' Advice and Aid Service
for its approval as a charitable organisation
within the meaning of Section 53(3) of the Income
Tax Ordinance and submitted a copy of the consti-
tution of the organisation.

Copies of the aforementioned letter and
constitution are hereunto annexed marked "I(i)"
and "I(ii)" respectively.

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14. The Commissioner thereupon obtained an
opinion from the Solicitor General who advised
that since the objects of the Citizens' Advice and
Aid Service were not wholly charitable the organi-
sation would not qualify to be ranked as a chari-
table organisation for the purposes of Section 53
of the Income Tax Ordinance.

A copy of the aforementioned opinion dated
19th April, 1962 is hereunto annexed marked "J".

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15. By letter dated 2nd May, 1962, the Honorary
directors of the aforementioned organisation were
informed of the advice of the Solicitor General
and the Commissioner's inability to allow contri-
butions made by members as deductions for income
tax purposes.

A copy of the abovementioned letter is here-
unto annexed marked "K".

16. By letter dated 26th May, 1962, the honorary
directors offered further comments on the meaning
of the word "charitable" and pointed out that the
aforementioned organisation is patterned along

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the same lines as the "National Citizens' Advice Bureau Committee", in the United Kingdom, and that the latter is accepted as a charitable organisation by the United Kingdom Inland Revenue Authorities. They further pointed out that new clauses have been included within the objects of the organisation and set them out in their letter.

In the Supreme
Court of
Guyana

No. 2
Statement of
Facts,
10th July,
1964.
(Contd.)

10 A copy of the aforementioned letter is hereunto annexed marked "L".

17. By letter dated 31st May, 1962, the Commissioner offered to reconsider the whole matter in view of the alterations effected in the objects of the organisation and requested, inter alia, amended copies of the constitution and objects of the organisation.

A copy of the aforementioned letter is hereunto annexed marked "M".

20 18. By letter dated 29th July, 1962, the honorary directors of the organisation replied giving the particulars requested and enclosed the following documents:-

(i) copy of Minutes of the Inaugural Meeting;

(ii) Proposed amendments to constitution.

Copies of the aforementioned letter, Minutes and Proposed Amendments are hereunto marked "N(i)", "N(ii)" and "N(iii)" respectively.

30 19. In the meantime the Commissioner obtained a copy of the Constitution of the National Citizens' Advice Bureau Committee for study and comparison with the constitution of the Citizens' Advice and Aid Service.

A copy of the aforementioned constitution is hereunto annexed marked "O".

20. By letter dated 1st September, 1962, the honorary directors requested an interview with the Commissioner.

In the Supreme Court of Guyana

No. 2 Statement of Facts, 10th July, 1964. (Contd.)

A copy of the aforementioned letter is here- unto annexed marked "P".

21. By arrangement, Messrs. Da Silva and Thorne called on the acting Deputy Commissioner at an interview on the 8th September, 1962, and were informed that the Constitution of the Citizens' Advice and Aid Service was not made along the same lines as that of the National Citizens' Advice Bureaux Committee of the U.K., and if, in fact they were prepared to adopt a new constitution, conforming with the objects of the U.K. Organisa- tion, the Commissioner would give the necessary recognition. Notes of the Interview were taken at the time.

10

A copy of the "Notes of Interview" is here- unto annexed marked "Q".

22. By letter dated 15th September, 1962, the Commissioner confirmed the opinion expressed at the aforementioned interview.

20

A copy of the aforementioned letter is here- unto annexed marked "R".

REASONS IN SUPPORT

The Commissioner says:-

(i) that under the provisions of Section 53(3) of the Income Tax Ordinance, Chapter 299, as amended by Section 7(i) of Income Tax (Amendment) Ordinance 1958 No. 4 of 1958 - Section 33 of Income Tax Amendment Ordinance 1962 No. 11 of 1962 - where any person otherwise than for valuable consideration, transferred, assigned or otherwise disposed of the right to any income for a period exceeding two years or for the remainder of his life to or for the benefit of any ecclesiastical, charitable or educational institu- tion, organisation or endowment of a public character, such income as may be transferred, assigned or otherwise disposed of would not be treated as the income of the transferer for the purpose of Income tax;

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(ii) that, on the other hand, where a person transfers otherwise than for valuable consideration

the right to any income for a period exceeding two years or for the remainder of his life to or for the benefit of an organisation which is not an ecclesiastical, charitable or educational organisation of a public character, the income so transferred would remain the income of the transferer for the purpose of income tax;

In the Supreme Court of Guyana

No. 2
Statement of Facts,
10th July, 1964.
(Contd.)

10 (iii) that the "Citizens' Advice and Aid Service" was not an ecclesiastical, charitable or educational organisation of a public character during the year 1961, the relevant year of income in this appeal, nor has it been an ecclesiastical, charitable or educational organisation of a public character during the years 1962 and 1963 and to the date of this appeal;

20 (iv) that the first occasion on which the Commissioner was asked to give recognition to the aforementioned organisation was on the 14th March, 1962; (Refer to Exhibit "I");

(v) that the copy of the Minutes of the inaugural meeting of the aforementioned organisation revealed that the meeting was held on the 28th May, 1961 the Minutes were approved on the 19th July, 1962, and that Mr. Lionel Luckhoo, Q.C., one of the persons in attendance stated that: "The Service is more than a charity it will help people to help themselves";

30 (vi) that under the provisions of Section 8 Chapter 2 of the Civil Law of British Guiana, the English Mortmain and Charitable Uses Act, 1888, is recognised as the law applicable to charities in British Guiana and that by English law only those organisations which are established for charitable purposes only have been held to be charitable;

40 (vii) that in C.I.R. v City of Glasgow Police Athletic Association, 34 T.C. at page 76, Lord Norman said, "If an association has two purposes, one charitable and the other not, and if the two purposes are so related that the non-charitable purpose cannot be regarded as incidental to the other, the association is not a body established for charitable purposes only";

(viii) that in the Oxford Group v C.I.R. (1949) 31 T.C. at page 221, Lord Cohen said, "if a non-

In the Supreme Court of Guyana charitable object is itself one of the purposes of the body of persons and it is not merely incidental to charitable purposes, the body of persons is not formed for charitable purposes only";

No. 2
Statement of
Facts,
10th July,
1964.
(Contd.)

(ix) that the general aims, functions and objects of the "Citizens' Advice and Aid Service" include purposes which are clearly non-charitable and which are not merely incidental to its charitable purposes, as evidenced in its Constitution which, inter alia, shows the following purposes:-

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(a) to encourage thrift and provide saving facilities;

(b) to help the citizens to benefit from and to use wisely the services provided for him by the State;

(c) in general to advise the citizen in the many complexities which may beset him;

(d) generally to do anything to assist the citizen whether financial or otherwise.

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Refer to Exhibit "I(ii)";

(x) the generality of the words used clearly excludes an exclusively charitable connotation. Viscount Simmonds said in *Badderly and others v. C.I.R.* 35 T.C. 661 at page 697, "..... the generality of the words has been held to exclude an exclusively charitable connotation";

(xi) that since his letter dated 15th September, 1962 addressed to the honorary directors of the aforementioned organisation expressing his willingness to recognise the organisation as charitable provided its constitution was amended to conform with that of the "National Citizens' Advice Bureau Committee" of England, no further communication was received from them and the Commissioner is left to conclude that the "Service" did not wish to pursue the matter of being recognized as a charitable organisation of a public character for the purpose of income tax;

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(xii) that, in fact, the amount of £4,200 paid to the "Citizens' Advice and Aid Services" under

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13.

deed by the Appellant during the year 1961, the year of income preceeding the year of Assessment 1962, remained the income of the Appellant for income tax purposes and was correctly assessed in the hands of the Appellant;

DATED THIS 10th DAY OF JULY, 1964.

V.J. Gangadin

Commissioner of Inland Revenue (ag.)

In the Supreme,
Court of
Guyana

No. 2
Statement of
Facts,
10th July,
1964.
(Contd.)

In the Supreme
Court of
Guyana

No. 3

JUDGMENT

No. 3
Judgment before
Luckhoo C.J.,
17th October,
1964.

PETER STANISLAUS D'AGUIAR

v

THE COMMISSIONER OF INLAND REVENUE

BEFORE: LUCKHOO, C.J. (IN CHAMBERS)

10

1964 August, 15, 18.
October, 17.

G.M. Farnum for the appellant.

David Singh, Ag. Senior Legal Adviser, for the
respondent.

The question for determination in this appeal is whether the sum of \$4,200 contributed during the year 1961 by the appellant P.S. D'Aguiar under Deed of Covenant to the organisation known as the Citizens Advice and Aid Service is a disposition of income to or for the benefit of a charitable organisation within the contemplation of s. 53(3) of the Income Tax Ordinance, Cap. 299 as substituted by s. 7 of the Income Tax (Amendment) Ordinance, 1958 (No. 4) and amended by s. 33 of the Income Tax (Amendment) Ordinance, 1962 (No. 11), and therefore not to be treated as the income of the transferor for the purpose of income tax.

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The provisions of subsection (3) of s. 53 abovementioned are as follows:-

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"53. (3) Notwithstanding anything to the contrary in this Ordinance where any person has, directly or indirectly, at any time before the end of the year immediately preceding the year of assessment, whether before or after the coming into effect of this subsection, transferred, assigned or otherwise disposed of to any person otherwise than for valuable and sufficient consideration the right to income that would if the right there- to had not been so transferred, assigned or

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otherwise disposed of be included in ascertaining his chargeable income for the year immediately preceding the year of assessment, because the income transferred, assigned or otherwise disposed of would have been received or receivable by him in or in respect of that year, such income shall be included in ascertaining his chargeable income, and not the chargeable income of any other person, for that year, unless the income is from property and he has also transferred, assigned, or otherwise disposed of such property to that person, or unless the income has been transferred, assigned, or otherwise disposed of for a period exceeding 2 years or for the remainder of his life to or for the benefit of any ecclesiastical, charitable or educational institution, organisation or endowment of a public character within British Guiana, or elsewhere as may be approved by the Governor for the purpose of paragraph (d) of section 10 of this Ordinance:

Provided that nothing in this subsection shall apply to income the right to which has been transferred, assigned or otherwise disposed of to or for the benefit of any ecclesiastical, charitable or educational institution, organisation or endowment of a public character before the 1st January, 1958."

On behalf of the appellant it was submitted that those provisions require that for the income transferred not to be treated as income of the transferor for the purpose of income tax, the organisation to which the transfer is made need not be one established solely for charitable purposes but may be one established mainly for charitable purposes, while for the respondent, the Commissioner of Inland Revenue, it was submitted that the organisation must be one established solely for charitable purposes before such income is not so treated.

In construing the provisions of subsection (3) of s. 53 of the Ordinance it will be observed that there is no definition of the expressions "charity", "charitable", "charitable organisation",

In the Supreme,
Court of
Guyana

No. 3
Judgment before
Luckhoo C.J.,
17th October,
1964.

(Contd.)

In the Supreme
Court of
Guyana

No. 3
Judgment before
Luckhoo C.J.,
17th October,
1964.

(Contd.)

"charitable institution", or "charitable purpose" contained in the Ordinance. Reference therefore must be made to the provisions of the Mortmain and Charitable Uses Act, 1888 which are applicable to British Guiana by virtue of s. 8 of the Civil Law of British Guiana Ordinance Cap. 2. For an organisation to be considered as a charity it is necessary to show that the objects of the organisation are within the spirit and intendment of the preamble to the enactment 25 Eliz. c. 4 as preserved by the Mortmain and Charitable Uses Act, 1888. The objects enumerated therein are examples of the objects of charity and are not to be regarded as the only objects of charity. In Pemsel's case (1891) A.C. 531; 3 Tax Cases 96, charities were stated to fall into four classes:- (1) the relief of poverty; (2) Advancement of education; (3) the advancement of religion; (4) for purposes beneficial to the community not falling within the first three classes. There has been later judicial decisions modifying this statement. In Williams Trustees v. C.I.R. 27 T.C. 409 it was held that it is not sufficient for the objects of an organisation or trust to be solely for the public benefit for the organisation or trust to qualify as a charity. The objects must be analogous to those set out in the Mortmain and Charitable Uses Act, 1888. In the course of his opinion in Williams Trustees v. C.I.R. Lord Simonds said (at pp. 426, 427):-

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"My Lords, there are, I think, two propositions which must ever be borne in mind in any case in which the question is whether a trust is charitable. The first is that it is still the general law that a trust is not charitable and entitled to the privileges which charity infers, unless it is within the spirit and intendment of the preamble to the Statute of Elizabeth 43 Eliz., c. 4., which is expressly preserved by section 13(2) of the Mortmain and Charitable Uses Act, 1888. The second is that the classification of charity in its legal sense into four principal divisions by Lord Macnaghten in Pemsel's case (1891) A.C. 531, at p. 583 (3 T.C. 53, at page 96), must always be read subject to the qualification appearing in the judgment of Lindley, L.J., in In re

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10 Macduff, (1896) 2 Ch. 451, at p. 466: 'Now Sir Samuel Romilly did not mean, and I am certain Lord Macnaghten did not mean, to say that every object of public general utility must necessarily be a charity. Some may be, and some may not be.' This observation has been expanded by Lord Cave, L.C., in this House in these words: 'Lord Macnaghten did not mean that all trusts for purposes beneficial to the community are charitable, but that there were certain charitable trusts which fall within that category; and accordingly to argue that because a trust is for a purpose beneficial to the community it is therefore a charitable trust is to turn round his sentence and to give it a different meaning. So here it is not enough to say that the trust in question is for public purposes beneficial to the community or for the public welfare; you must also show it to be a charitable trust' - see Attorney General v. National Provincial Bank (1924) A.C. 262, at page 265."

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In the Supreme Court of Guyana

No. 3

Judgment before Luckhoo C.J., 17th October, 1964.

(Contd.)

Counsel for the appellant contends that in England for a gift to an organisation to qualify for exemption from being considered as part of the chargeable income of the donor it must be shown -

- 30 (a) that the organisation is a charity within the Mortmain and Charitable Uses Act, 1888;
- (b) that such a charity is one for charitable purposes only.

40 Counsel for the appellant has further contended that the second requirement was imposed by the provisions of s. 37(i)(b) of the Income Tax Act, 1918 and by s. 30 of the Finance Act, 1921, as extended by s. 24 of the Finance Act, 1927 (see now s. 448(3) of the Income Tax Act, 1952), that there being no similar enactment in British Guiana it is not required that the organisation should be one established for charitable purposes only but may be one established mainly for charitable purposes.

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

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in s. 37(i)(b) of the Income Tax Act, 1918 in respect of exemptions under Schedules C and D in s. 30 of the Finance Act, 1921, in connection with Schedules A, B and D, the expression "charity" is used and is defined therein as meaning any body of persons or trust established for charitable purposes only. In s. 37(i)(a) of the 1918 Act in connection with Schedule A, the expression "trustees for charitable purposes" is used and has been given the same meaning as the words "trust established for charitable purposes only". R. v. Special Commissioners Ex. p. University College of North Wales (1909) 5 Tax Cases 408. This meaning, as Lord Macnaghten in Pemsel's case points out, is a technical meaning attached to the word "charity" (where there is no controlling context) as a result of the statute 43 Eliz. c. 4. As I understand this observation of Lord Macnaghten this technical meaning was not given the word "charity" as a result of the provisions of any of the Income Tax or Finance Acts. The provisions of the Mortmain and Charitable Uses Act, 1888, having been made applicable of British Guiana the words "charity" and "charitable" should bear the same technical meaning as those words bear in England and the expression "charitable institution or organisation" in s. 53(3) of the Income Tax Ordinance, Cap. 299, should therefore be construed as meaning an institution or organisation established solely for charitable purposes. The question whether an organisation is established for charitable purposes only is one of law (Royal Choral Society v. I.R.C. (1943) 2 All E.R. 101; 25 T.C. 263).

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In considering whether an organisation has been established for charitable purposes only regard must be had to the objects for which the organisation was established and in the construction of the objects for which the organisation was formed it is necessary to distinguish whether each object is in itself an independent object or whether the later objects are not merely ancillary and for the purpose of carrying out the objects contained in the opening clauses. See Oxford Group v. I.R.C. (1948) 1 All E.R. 537; 31 T.C. 221 and Crystal Palace Trustees v. Minister of Town and Country Planning (1951) Ch. 132; (1950) 2 All E.R. 857. It is also necessary to distinguish

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between objects and powers to enable effect to be given to the objects. The purposes to be considered charitable must be directed to the public benefit.

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(Contd.)

10 In the Crystal Palace Trustees case counsel for the Minister had inter alia urged that the ambit of the objects of the Trustees as expressed in s. 14 of the Crystal Palace Act, 1914, was so wide that they would be entitled to expend money or effort in the promotion or advancement of political theories or purposes which would be quite outside the limits of charitable activities. Counsel relied, in particular, on the extensive nature of the powers contained in s. 14 of the Act and especially subsection (8) which he contended, enabled the trustees to do whatever they thought fit, according to their judgment or opinion. In support of this proposition, he relied on the observations of Cohen L.J., in Oxford Group v. I.R.C. (ubi sup). Danckwerts, J., in the course of his judgment said (1950) 2 All E.R. 858):-

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30 "As regards this last argument, it appears to me that the position in the Oxford Group case was very different from that with which I have to deal, as the powers conferred by the subsections of s. 14 in the present case are not objects in themselves but are simply powers which are ancillary to and for the purpose of carrying out the objects expressed in the opening provision of the Section."

(31 Cohen L.J. in the Oxford Group case had said T.C. at p. 221):-

"If a non-charitable object is itself one of the purposes of the body of persons and it is not merely incidental to charitable purposes the body of persons is not formed for charitable purposes only."

40 In C.I.R. v. City of Glasgow Police Athletic Association 34 T.C. at p. 76, Lord Normand said:-

"If an Association has two purposes, one charitable and the other not, and if the two purposes are so related that the non-charitable purpose cannot be regarded as

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incidental to the other, the association is
not a body established for charitable purposes
only."

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Luckhoo C.J.,
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I shall now proceed to consider the objects of
the Citizens' Advice and Aid Service which are set
out in the Constitution of that Organisation. The
first clause in paragraph 2 of the Constitution is
as follows:-

"(a) to provide advice, aid and services on or
relating to medical, dental, optical,
health, legal, matrimonial, domestic or
other social matters;"

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Counsel for the appellant contends that the words
"medical, dental, optical, health, legal, matri-
monial, domestic" relate to the physical and mental
well being of the community and the words "or other
social matters" following those words must be
construed as meaning "or other social problems".
I do not think that there is any scope for the
operation of the eiusdem generis rule whereby the
words may be construed as "or other such like
social matters". And this apart there is no
limitation which can be placed upon the category
of matters which fall within the expression
"social matters" whereby those matters must
necessarily be objects of charity. The words "or
other social matters" do not restrict those
administering the Service from including among the
objects under paragraph (a) such social matters
which are not objects of charity.

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The second clause is as follows:-

"(b) to establish and operate a fund for the
assistance of those in need on such terms
and conditions as the Central Committee
may determine."

The establishment and operation of a fund for the
assistance of those in need forms an object
designed to relieve poverty and is therefore a
charitable object. The Central Committee is
empowered to decide the terms and conditions for
the operation of such a fund. This is merely a
power to enable effect to be given to the object
stated in this clause and does not affect the
charitable nature of the object.

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The third clause:-

"(c) to encourage thrift and provide saving facilities;"

and is a charitable object directed to the prevention of poverty.

The fourth clause:-

"(d) to make available to the individual in confidence accurate information and skilled advice on personal problems of daily life;"

This is clearly too wide a provision to be confined to charitable purposes only. Personal problems of daily life are varied and numerous and embrace many matters outside the scope of charitable objects.

The fifth clause:-

"(e) to establish, organise, sponsor or otherwise promote Adult Education and technical training of every kind including the explanation of legislation and Government notices and publications;"

is directed to the advancement of education and is therefore a charitable purpose.

The sixth clause:-

"(f) to help the citizen to benefit from and to use wisely the services provided for him by the State;"

is conceded by counsel for the respondent to be a charitable purpose.

The seventh clause:-

"(g) In general to advise the citizen on the many complexities which may beset him;"

Is this an independent object or an object merely ancillary and for the purpose of carrying out the

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objects stated in the earlier clauses? The clause is so worded that it includes both an independent object and an object ancillary and for the purpose of carrying out the earlier objects some of which are not charitable.

The final clause:-

"(h) Generally to do anything to assist the citizen, whether financial or otherwise who makes enquiry of the Service and in any way as may be determined by the Central Committee."

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The concluding words "and in any way as may be determined by the Central Committee" constitute merely a power in the Central Committee to enable effect to be given to the object stated in the clause. The object stated in the clause may perhaps be construed as being merely ancillary and for the purpose of carrying out the objects contained in the opening clauses.

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Clauses (a), (d) and (g) include non-charitable objects and therefore the organisation is not established for charitable purposes only.

In the result the amount of income transferred by the appellant to the organisation during the year 1961 must be treated as the income of the transferor for the purpose of income tax.

The Commissioner therefore did not err in coming to that conclusion and for that reason his amended assessment is not in error.

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The appeal must be dismissed and the Assessment affirmed with costs fixed at \$360.

Dated this 17th day of October, 1964.

J.A. Luckhoo

Chief Justice.

J.E. de Freitas, solicitor for the appellant.

The Crown Solicitor for the respondent.

No. 4

ORDER OF COURT DISMISSING APPEAL

In the Supreme
Court of
Guyana

No. 4
Order of Court
dismissing
appeal,
18th August,
1964.

B E T W E E N :-

PETER STANISLAUS D'AGUIAR

- and -

THE COMMISSIONER OF INLAND REVENUE

BEFORE THE HONOURABLE SIR JOSEPH
LUCKHOO, CHIEF JUSTICE (IN CHAMBERS)

SATURDAY THE 18th DAY OF AUGUST, 1964

ENTERED THE 6th DAY OF NOVEMBER, 1964

UPON MOTION BY WAY of Appeal dated the 28th day of May, 1964 and made unto this Court by Peter Stanislaus D'Aguiar AND UPON HEARING COUNSEL for the Appellant and Counsel for the respondent.

20 IT IS ORDERED that the appeal be dismissed and that the assessment of the Commissioner of Inland Revenue be affirmed.

AND IT IS FURTHER ORDERED that the appellant do pay to the respondent costs of this appeal fixed in the sum of \$360.00 (three hundred and sixty dollars).

BY THE COURT

B.B. McG. Gaskin

DEPUTY REGISTRAR

In the British
Caribbean
Court of
Appeal

No. 5

NOTICE OF APPEAL

No. 5
Notice of
Appeal,
25th November,
1964.

IN THE BRITISH CARIBBEAN COURT
OF APPEAL

Territory: BRITISH GUIANA

CIVIL APPEAL No. 45 of 1964

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In the matter of the Income
Tax Ordinance, Chapter 299

B E T W E E N :-

PETER STANISLAUS D'AGUIAR,
Appellant
(Appellant)

- and -

THE COMMISSIONER OF INLAND REVENUE
Respondent
(Respondent)

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TAKE NOTICE that the abovenamed Peter Stanislaus D'Aguiar being dis-satisfied with the decision more particularly stated in paragraph 2 hereof of the Supreme Court of British Guiana contained in the Judgment of the Honourable the Chief Justice, dated the 17th day of October, 1964, doth hereby appeal to the British Caribbean Court of Appeal upon the grounds set out in paragraph 3 hereof and will at the hearing seek the relief set out in paragraph 4.

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AND the Appellant further states that the names and addresses, including his own of the persons directly affected by the appeal are those set out in paragraph 5.

2. The whole decision.

3. Grounds of Appeal

(a) The Citizens Aid and Advice Service
(hereinafter referred to as the Service)

is an Institution or Organisation established for charitable purposes only alternatively is a charitable institution or organisation of a public character, and accordingly the disposition of \$4,200:- contributed during the year 1961 by the Appellant under Deed of Covenant to the Service was a disposition of income to or for the benefit of a charitable institution or organisation of a public character within the contemplation of section 53(3) of the Income Tax Ordinance, Chapter 299 as substituted by section 7 of the Income Tax (Amendment) Ordinance, 1958, (No. 4) and amended by section 33 of the Income Tax (Amendment) Ordinance 1962 (No. 11) (hereinafter referred to as section 53(3) and therefore the said sum was not the income of the Appellant for the purposes of Income Tax.

In the British
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Court of
Appeal

No. 5
Notice of
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1964.
(Contd.)

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- (b) The learned Chief Justice erred in holding that the words "or other social matters" in paragraph 2(a) of the constitution of the Service did not restrict those responsible for administering the Service from including among its objects social matters which were not objects of charity and misinterpreted the paragraph by ignoring the operative words thereof namely "to provide advice, aid services on or relating to".
- (c) The learned Chief Justice erred in holding that paragraph 2(d) of the aforesaid constitution was too wide a provision to be confined to charitable purposes only and failed to appreciate that the purpose of making available accurate information and skilled advice on personal problems of daily life which to the individual concerned is almost always complex and a source of anxiety is a purpose beneficial to the community.
- (d) The learned Chief Justice erred in holding that paragraph 2(g) included a non-charitable object for the reason

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stated in ground (c) namely the purpose of the paragraph is a purpose beneficial to the community.

(e) The learned Chief Justice in construing the constitution of the Service erred in failing to construe its objects and purposes as a whole namely to construe the sole object and purpose of the Service as the provision of a free public service for the benefit of the community as a whole, within the spirit and intendment of the preamble to the statute of Elizabeth. Alternatively in failing to find that the Service is a charitable institution or organisation of a public character within the true intent and meaning of section 53(3).

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(f) In the alternative the Appellant will contend that the learned Chief Justice erred in holding that a charitable institution or organisation within the contemplation of section 53(3) must be an institution or organisation established solely for charitable purposes.

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4. The relief sought from the British Caribbean Court of Appeal is that the assessment of \$2,940.00 by the Respondent be set aside; that the judgment of the Honourable the Chief Justice should accordingly be reversed and the appeal by the Appellant be allowed and that the costs of this appeal and of the hearing of the appeal in the Court below be paid by the Respondent.

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5. Persons directly affected by the Appeal.

<u>Names</u>	<u>Addresses</u>
Peter Stanislaus D'Aguiar	By-ways, Kitty, East Coast Demerara.
The Commissioner of Inland Revenue	G.P.O. Building, Robb Street, Georgetown.

Dated the 25th day of November, 1964.

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J. Edward de Freitas

Solicitor for the Appellant
(Appellant)

No. 6

JUDGMENTS OF PERSAUD, J.A.
AND LUCKHOO, J.A.

In the Court
of Appeal of
the Supreme
Court of
Judicature

IN THE COURT OF APPEAL OF THE
SUPREME COURT OF JUDICATURE

CIVIL APPEAL No. 45 of 1964

No. 6
Judgments of
Persaud, J.A.
and Luckhoo,
J.A.
6th June, 1967.

10 B E T W E E N :-

PETER STANISLAUS D'AGUIAR,
Appellant,

- and -

THE COMMISSIONER OF INLAND REVENUE,
Respondent.

BEFORE Sir Kenneth Stoby, Chancellor.
Mr. Justice Luckhoo, Justice of Appeal.
Mr. Justice Persaud, Justice of Appeal.

20 30th January, 1st February
and 6th June, 1967

G.M. Farnum, Q.C. for Appellant
M. Shahabudden, Q.C. Solicitor General and
S. Rahaman for Respondent

JUDGMENT

PERSAUD, J.A.:

30 The point in this appeal is whether the
appellant (tax payer) is entitled in the computa-
tion of his taxable income to deduct the sum of
\$4,200: which he contributed under a Deed of
Covenant to an organisation described as the
Citizens Aid and Advice Service and referred to
in this judgment as the organisation. The
Commissioner held the view that the sum contribu-
ted was not deductible, and the members of the
Board of Review unfortunately were evenly divided
in their opinions. A judge in chambers shared
the Commissioner's view, and dismissed an appeal
by the appellant.

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Counsel for the appellant has advanced his arguments along two separate but complementary lines. The first assumes that, as in England, to be classified as charitable, an organisation must exist for charitable purposes only, in which case the submission is that the organisation here qualifies. The second argument examines s. 53(3) of the Income Tax Ordinance (Cap. 299) and propounds the theory that the true construction of the Section leads to the conclusion that it is unnecessary for an organisation to be charitable only to entitle a tax-payer to deduct from his income donations to such an organisation. Counsel further submits that the organisation falls under categories (1) and (4) as set out in Pensel's Case, 3 Tax Cas. 53, that is to say, "for the relief of poverty" and "for other purposes beneficial to the community, not falling under any of the preceding heads". This latter object was also described in Morice v. Bishop of Durham 10 Ves. 522 as the advancement of objects of general public utility, and as being the most difficult category.

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Before dealing with the submission, it might be of some use to make a few general observations. The overriding test in deciding whether an object is charitable is whether or not it is for the benefit of the public, but an object which is for the public benefit is not necessarily charitable, just as a philanthropic object may not be charitable. /See A.G. v. National Provincial Bank (1924) A.C. 265/. A donor's opinion and his motive are both immaterial to the determination of this question, and so also are the opinions of officers of the organisation. The thing to be examined in this case in order to arrive at a conclusion is the constitution of the organisation in which are set out its objects and aims. But those objects and aims are still to be tested to ascertain whether they are within the spirit and intendment of 43 Eliz. 1, c. 4, for s. 8 of the Civil Law of Guyana (cap. 2) provides that the law as to charities shall be the common law of England, provided that by "charities" shall be ordinarily understood charities within the meaning, purview, and interpretation of the preamble to 43 Eliz. 1, c. 4, as preserved by the Mortmain and Charitable Uses Act, 1888. Or as it has been put by Lord Simonds in Williams' Trusts v. I.R.C. (1947) 1 All E.R. at p. 518:-

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"..... there are, I think, two propositions which must ever be borne in mind in any case in which the question is whether a trust is charitable. The first is that it is still the general law that a trust is not charitable and entitled to the privileges which charity confers unless it is within the spirit and intendment of the preamble to 43 Eliz. c. 4, which is expressly preserved by s. 13(2) of the Mortmain and Charitable Uses Act, 1888."

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The other proposition has already been referred to in this judgment, that is, that not all trusts that are beneficial to the community are charitable.

Of course, I hasten to add that even though the Courts must not ignore the spirit and intendment of the Act, it is the case that the English Courts have from time to time extended by analogy the benefit of the law to various objects. As Lord Eldon said in Morice v Bishop of Durham 10, Ves. 522, the court has taken strong liberties upon the subject of charities, but notwithstanding the strong liberties it has taken, there are certain principles which have always guided the court. It is inevitable that the courts would have extended the classification to include other objects if only because as time goes on the needs of mankind have become wider and more elaborate and an object which could not have been contemplated when the Act of Elizabeth and even the Mortmain and Charitable Uses Act were enacted, could very well in the present century fall within the spirit and intendment of the former. It is clear that enumeration contained in the Statute of Elizabeth was not exhaustive. As Lord Simonds puts the matter in the National Anti-Vivisection Society's Case 28, Tax. Cas. at p. 369:-

"The task of the Court was in some degree simplified by the Statute of Elizabeth, which made it clear that at least the purposes enumerated in the preamble were charitable, but from the beginning it appears to have been assumed that the enumeration was not exhaustive and that these purposes also were charitable which could be fairly regarded as within its

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spirit and intendment. This view enabled the Court to extend its protection to a vast number of objects which appeared both to the charitable donor and to it to be for the benefit of the community. Nowhere perhaps did the favour shown by the law to charities exhibit itself more clearly than in the development of the doctrine of general charitable intention, under which the Court, finding in a bequest (often, as I humbly think, on a flimsy pretext) a general charitable intention, disregarded the fact that the named object was against the policy of the law and applied the bequest to some other charitable purpose."

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Counsel for the appellant relies upon the dictum of Fitzgibbon, L.J., in Re Cranston (1898) 1 Ir. R. at p. 446, particularly so as it was adopted by Lord Cozens-Hardy, M.R. in Re Wedgwood, Allen v. Wedgwood (1915) 84 L.J. R. at p. 108. That dictum is to this effect:-

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"..... any gift which proceeds from a philanthropic or benevolent motive, and which is intended to benefit an appreciably important class of our fellow-creatures (including under decided cases, animals), and which will confer the supposed benefit without contravening law or morals, will be 'charitable'."

And Lord Cozens-Hardy continued his judgment with these words (ibid at p. 108):-

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"It may be, and indeed I think it is true that there has been a tendency to enlarge the meaning of the word 'charity' and that gifts within the last fifty years have been supported as good charitable gifts which a hundred and fifty years ago would not have been supported."

I have already attempted to give a reason for the latter dictum. There can be no exception to the statement of Fitzgibbon, L.J., as it stands if the purpose of the gift was not illegal, and not contrary to public policy. I would refer to the dictum of Holmes, L.J., in the same case and also referred to by Cozens-Hardy, M.R. in Wedgwood to

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the effect that gifts, the object of which is to prevent cruelty to animals and to ameliorate the position of the brute creation, are charitable.

Lord Justice Holmes said:-

"If it is beneficial to the community to promote virtue and to discourage vice, it must be beneficial to teach the duty of justice and fair treatment to the brute creation, and to repress one of the most revolting kinds of cruelty."

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The Wedgwood case concerned a trust for the protection and benefit of animals, by the movement for the humane slaughtering of animals, and to provide municipal abattoirs.

I wish to observe in passing that In Re Foveaux (1895) 2 Ch. 501 which was also cited with approval in the Wedgwood Case has since been overruled in C.I.R. v. National Anti-Vivisection Society 28 Tax. Cas. 312.

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In the last mentioned case - decided in 1947 - it was held that a society which existed "to awaken the conscience of mankind to the iniquity of torturing animals for any purpose whatever" and to suppress the practice of vivisection was not established for charitable purposes only, this being contrary to the decision in Re Wedgwood.

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So much for the cases dealing with the amelioration of the suffering of animals. I have had reason to refer to them because two of them were relied upon by the appellant, and to show that they are not completely acceptable. It is still the law - as was observed by Lord Simonds in the National Anti-Vivisection Society's Case (ibid at p. 375) that the Court must still in every case determine by reference to its special circumstances whether or not a gift is charitable.

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It now becomes necessary to set out in detail the objects of the society in the instant case, in order to deal with the first submission, that is, assuming that to qualify

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for relief the organisation must exist for charitable purposes only, then it so qualifies having regard to its objects.

The objects are as follows:-

- (a) to provide advice, aid and services on or relating to medical, dental, optical, health, legal, matrimonial, domestic or other social matters; 10
- (b) to establish and operate a fund for the assistance of those in need on such terms and conditions as the Central Committee may determine;
- (c) to encourage thrift and provide saving facilities;
- (d) to make available to the individual in confidence accurate information and skilled advice on personal problems of daily life; 20
- (e) to establish, organise, sponsor or otherwise promote Adult Education and technical training of every kind including the explanation of legislation and Government notices and publications;
- (f) to help the citizens to benefit from and to use wisely the services provided for him by the state;
- (g) in general to advise the citizen on the many complexities which may beset him; 30
- (h) generally to do anything to assist the citizen, whether financial or otherwise who makes enquiry of the Service and in any way as may be determined by the Central Committee.

As I understand the appellant's submission, all the abovementioned objects merely set out the ambit of a scheme of social amelioration; while the respondent argues that even though some of the objects are charitable, others are not, and therefore the organisation does not exist for charitable 40

purposes only, and it must fall into this category to qualify.

I will say at once that in my opinion, no one object can be singled out as the main object and the others ancillary; they may all be intended to operate for the general amelioration of the people, but each has a separate aim, for example, to take two at random, (b) speaks of establishing and operating a fund for the assistance of those in need, while (f) contemplates helping the citizen to benefit from and to use wisely the services provided for him by the State - two totally unrelated objectives.

So far as the category of charitable objects is concerned, I would rule out the relief of poverty, as it does not appear to me that, with the possible exception of object (b) any of the other objects can be said to be devoted to the relief of poverty, and even (b) is subject to "such terms and conditions as the Central Committee may determine". If then, the organisation is charitable, it can only be because it falls within the fourth class in Lord Macnaghten's classification, that is, it must be an organisation of general public utility and must be within the spirit and intendment of the preamble to the Statute 43 Eliz. c. 4.

Now to revert to the first submission. As I have already indicated, the objects of the organisation as set out in its constitution are each a substantial object. And if it is found that some of those objects are not charitable, then it is not possible to save the rest.

I will refer to objects (a), (d), (g) and (h), which are already set out in this judgment. I can do no better to illustrate my point than to quote from the judgment of Viscount Simonds in Baddeley and others v. C.I.R. 35 Tax. Cas. at p. 697:-

"My Lords, I do not think it would be possible to use language more comprehensive and more vague. I must dissent from the suggestion that a narrow meaning must be ascribed to the word 'social'; on the

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contrary, I find in its use confirmation of the impression that the whole provision makes upon me, that its purpose is to establish what is well enough called a community centre in which social intercourse and discreet festivity may go hand in hand with religious observance and instruction. No one will gainsay that this is a worthy object of benevolence, but it is another question whether it is a legal charity, and it appears to me that authority which is binding on Your Lordships puts it beyond doubt that it is not. Here we are not concerned to consider whether a particular use to which the trust property may be put is a charitable use; that is a question upon which different minds might well come to different conclusions. On the contrary, we must ask whether the whole range of prescribed facilities or activities, call them what you will, is such as to permit uses which are not charitable: if it is, it is not such a trust as the Court can execute, and it must fail."

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In Williams' Trusts v. I.R.C. (1947) 1 All E.R. 513, a trust deed was executed whereby certain freehold property was held in trust to maintain an institute in London for the benefit of the Welsh people, resident in or near or visiting London, to promote moral, social, spiritual, and educational welfare of the Welsh people. There were several other objects included in the trust deed. It was held that the property was not vested in the trustees for charitable purposes only. In the course of his judgment, Viscount Simonds, after quoting Russell, L.J. as saying /in Re Grove-Grady (1929) 1 Ch. 582; (1929) All E.R. 158/that matters have been stretched in favour of charities almost to bursting point, continued (at p. 520):-

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"That point would be reached if Your Lordships held that this trust deed has a purpose which falls within the spirit and intendment of the preamble; it clearly does not, and, if it does not, let the purpose be as beneficial as you like, here is no charity."

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If I may, I would with the greatest respect, use the language of Viscount Simonds to describe the present situation and say that here there is no charity.

Dealing with the powers which a Company can exercise as being conducive to a main object (and I would imagine that this argument would be a greater force in the case of all main objects, as I have held to be the position in this appeal), Lawrence, L.J. in the Keren Kayemeth Case (17 Tax. Cas. at p. 41) said:-

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10 "The Company can exercise any or all of these powers whenever in its opinion such an exercise would be conducive to the attainment of the so-called primary object which, from a practical point of view, means that it can exercise them whenever it is minded to do so, and whether such exercise is in fact conducive to the attainment of that object or not, as neither the Court nor any one else can control the Company's opinion, or otherwise interfere with the manner in which it chooses to carry out its objects."

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Similarly, in the instant case, the establishment and operation of a fund for those in need must be on such terms and conditions as the Central Committee of the organisation may determine, and the objects as set out in this general and all-embracing clause are subject to the determination of the Central Committee. This, in my judgment, is much too wide. As it is put by Lord Cohen in Oxford Group v. C.I.R. 31 Tax.Cas. at p. 254:-

30 "..... the question which the Court would have to decide, if any activity of the Association were being challenged as being ultra vires, would be not whether in the opinion of the Court the activity was conducive to the main object but whether the Association in undertaking it had thought it conducive."

In other words, the Court is denied the power to decide whether an object is or is not charitable, but the organisation has that power. This cannot be the true legal position.

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Clause (e) seeks to encourage thrift and to provide saving facilities. This, no doubt, is a laudable object, and a worthwhile pursuit, but it cannot be said to be charitable. It has been said that there may be a good charity for the

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relief of persons who are not in grinding need or utter destitution, but relief connotes need of some sort, and it cannot be said that every person who participates in a thrift society is necessarily in need. The Income Tax Ordinance, Cap. 299 itself does not seem to accept a thrift society as a charitable organisation, for s. 10(p) makes provision for the exemption from income tax of the income of any institution established for the encouragement of thrift only if it is so declared.

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I am of the view, therefore, that this organisation is not charitable within the meaning of 43 Eliz. 1. c. 4.

Now to the second proposition, namely, that under s. 53(3) of the Ordinance, it is unnecessary for the organisation to be charitable only in order to enable a contributor to avoid tax on his donation. The section exempts from tax any contribution made "to or for the benefit of any ecclesiastical, charitable, or educational institution, organisation or endowment of a public character". Unlike the English legislation the word "only" is not used in our ordinance. If the organisation is a charitable institution, well then the section applies; but it must be a charitable institution within the intendment of 43 Eliz. 1. c.4, that is, that the criterion is that it must be devoted exclusively to a charitable purpose or purposes.

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The United Kingdom legislation contains the phrases: "to charitable purposes only" (s. 37 of the Income Tax Act, 1918) and "applied solely to the purpose of the charity" (s. 30 of the Finance Act, 1921) s. 30(3) of the latter Act defines charity to mean: "any body of persons or trust established for charitable purposes only" and the Income Tax Act, 1952, repeats this definition. In my opinion, the reason for inserting the words "only" and "solely" is plain; it is to restrict the use to which the profits or rents of any body of persons or a trust can be put in order to qualify for exemption. The important distinction between the United Kingdom legislation and our legislation is that under the former it is the rents and profits of the organisation itself which are being scrutinised for purposes of

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taxation, while in the latter it is the nature of a contribution of an individual to an organisation which is being examined but for the same purpose; but, and this is of the utmost significance, no attempt has been made in the English legislation to detract from the meaning of the word "charity". Even if such an attempt has been made, this would not have affected the meaning as it is understood in these courts, if only because the original meaning has been retained here by statute. It was necessary to place a limitation on organisation and trusts in the United Kingdom, for the reason that to do otherwise would have resulted in their being able to utilize their funds for purposes other than charity, and yet able to avail themselves of the exemption. This is exemplified by Cohen, L.J. in Tenant Plays, Ltd. v. I.R.C. (1948) 1 All E.R. when he said at p. 510:-

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"I think the principle that one must look only at the main or dominant purpose of the company must be taken with a little reserve. I feel some doubt whether a company can be said to be established 'for charitable purposes only' if it carried on a substantial non-charitable purpose, for instance if it took power permanently to run a public house in order to produce funds for its charitable purpose."

Cohen, L.J. referred to certain observations which were made by Lawrence, L.J. in the Keren Kayemeth Case (17 Tax.Case.at p. 40), and I would wish to repeat those in this judgment:-

"The instrument with which this case is concerned consists of the memorandum of association of the company and it is essential to bear in mind that in order to obtain exemption from income tax under the section it is not enough that the purposes described in the memorandum should include charitable purposes, the memorandum must be confined to those purposes so that any application by the company of its funds to non-charitable purposes would be ultra vires...."

I am therefore inclined to the view that the second submission is also without merit.

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I find myself in the position where I cannot accede to either submission made on behalf of the appellant, and so I would move for a dismissal of this appeal, with the usual consequences as to costs, for I feel that the decision of the judge in Chambers was right.

G.L.B. Persaud
Justice of Appeal.

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I concur.

Edward V. Luckhoo
Justice of Appeal.

Solicitors:

J.E. de Freitas for Appellant.

The Crown Solicitor for the Respondent.

No. 7

JUDGMENT OF THE CHANCELLOR

IN THE COURT OF APPEAL OF THE
SUPREME COURT OF JUDICATURE

CIVIL APPEAL No. 45 of 1964

In the Court
of Appeal of
the Supreme
Court of
Judicature

No. 7
Judgment of
The Chancellor,
6th June, 1967.

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B E T W E E N :-

PETER STANISLAUS D'AGUIAR,
Appellant,

- and -

THE COMMISSIONER OF INLAND REVENUE
Respondent.

BEFORE SIR KENNETH STOBY President.
MR. E.V. LUCKHOO Justice of Appeal.
MR. G.L.B. PERSAUD Justice of Appeal.

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1967: January 30.
February 1.
June 6.

G.M. Farnum, Q.C. for the Appellant.
M. Shahabuddeen, Q.C. associated with S. Rahaman
for the Respondent.

JUDGMENT

THE CHANCELLOR:

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The appellant submitted to the Commissioner of Inland Revenue a return of his income for the year of assessment 1962. In so doing he deducted the sum of \$4,200:- being an amount paid during the year 1961 to an organisation known as the Citizen's Advice and Aid Service under a Deed of Covenant. The Commissioner of Inland Revenue in computing the taxpayer's chargeable income did not allow the sum of \$4,200:- as a legitimate deduction on the ground that the Citizen's Advice and Aid Service was not a charitable institution.

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This appeal is from a decision of a Judge in Chambers upholding the decision of the Commissioner.

Two grounds of appeal were argued. First it was said that the learned judge misdirected himself in holding that under the relevant law of this country a gift to a charitable institution is not a permissible deduction unless it is proved that the institution exists for charitable purposes only. It was submitted that in Guyana unlike the U.K. an organisation which is conducted partly for charitable purposes and partly for non-charitable purposes qualifies as a charitable institution under the Income Tax Ordinance, s. 53(3) Cap. 299.

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In view of the arguments the U.K. and Guyana provisions drawn to the attention of the Court must be contrasted.

The Guyana s. 53(3) deals with the income of a donor and exempts that income from tax under certain conditions. The material portion of the subsection is:-

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"Notwithstanding anything to the contrary in this Ordinance where any person has, directly or indirectly, assigned or otherwise disposed of to any person otherwise than for valuable and sufficient consideration the right to income that would if the right thereto had not been so transferred, be included in ascertaining his chargeable income for the year unless the income has been transferred, assigned, or otherwise disposed of for a period exceeding 2 years or for the remainder of his life to or for the benefit of any ecclesiastical, charitable or educational institution, organisation or endowment of a public character within British Guiana "

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In the U.K. the Income Tax Act 1918 s. 37 provides for exemption to tax in respect of lands belonging to hospitals and other charities. S. 37 states:-

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"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:

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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;"

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The Finance Act 1921 s. 30 deals with the exemption from income tax in respect of income of certain lands owned and occupied by charities and of profits of trades carried on by beneficiaries of charities. The Finance Act 1921 s. 30 provides:-

"Exemption shall be granted:-

- (a)
- (b)
- (c) from income tax under Schedule D in respect of the profits of a trade carried on by any charity, if the profits are applied solely to the purposes of the charity and either -
 - (i) the trade is exercised in the course of the actual carrying out of a

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primary purpose of the charity;
or

- (ii) the work in connection with the
trade is mainly carried on by bene-
ficiaries of the charity."

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and s. 30(3) is:-

"In this section the expression 'charity'
means any body of persons or trust established
for charitable purposes only."

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The Income Tax Act 1952 s. 448(3) repeats this
definition of "charity".

The repeated use of the words "charitable
purposes only" in the U.K. legislation requires
further investigation as it is unlikely they are an
accident of inefficient draftsmanship; these words
must have been selected and inserted for a specific
reason. A study of some of the decided cases will
be of assistance. In Rex. v. Special Commissioners
of Income Tax, 8 Tax Cases 286, the Lord Chief
Justice said:-

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"This rule raises an interesting question upon
the right to exemption from Income Tax. Mr.
Joseph Rank has by an Indenture of 7th March,
1917 settled or conveyed to trustees a very
large sum of money, and under that deed he
reserved to himself by Clause 3 power to
appoint to himself, or to anybody he liked.
I will read the Clause:- 'The Trustees shall
stand possessed of the said Preference and
Ordinary Shares and War Stock and of the
moneys or investments for the time being
representing the same (hereinafter referred
to as 'the Trust Funds') and of the income
of the Trust Funds upon such trusts for the
benefit of such persons Institutions or
purposes as the said Joseph Rank shall by any
writing under his hand or by Will appoint.'
Clause 4 provides that 'In default of and
subject to any such appointment by the said
Joseph Rank the Trustee shall stand possessed
of the Trust Funds and the income thereof for

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such purposes connected with and for the benefit of the Wesleyan Methodist Church and to be applied in such manner as the Trustees or if they shall be more than two in number the majority of the Trustees shall in their absolute discretion determine'. Now it is said by the learned Counsel appearing for Mr. Rank's trustees that that deed creates a trust for charitable purposes only, and therefore it comes within the exemption conferred by Section 105 of the Act of 1842 and the Rules thereunder, and now by Section 37 of the Act of 1918."

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Avory J. based his judgment on a wider principle by referring to Lord Eldon's judgment in *Morice v. The Bishop of Durham* 10 Vesey 522 where it was held that a trust declared for charitable objects or for other purposes was not a trust for charitable purposes.

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McCardie J. limited his judgment to the narrower ground; he said:-

"..... For the purpose of securing exemption under this sub-head of Section 37 the whole of the purposes must fall within the technical requirements of the words 'charitable purposes' as employed in the Income Tax Acts. If once that point be clear, and if the words of Lord Macnaghten in *Fensel's* case at page 586 be remembered - they have already been read by the Attorney-General - then the point for decision is here brief.

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Taking this deed of 1917 and reading the two material clauses, does it exhibit a trust for charitable purposes only?....."

The case of *Tenant Plays Ltd. v. Inland Revenue Commissioners* (1948) 1 All E.R. 506 illustrates the importance of the word "only" in the various Income Tax and Finance Acts (U.K.):-

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"The Finance Act, 1921, s. 30(1) (as substituted by the Finance Act, 1927, s. 24), provides: 'Exemption shall be granted (c) from income tax under

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Sched. D in respect of the profits of a trade carried on by any charity, if the profits are applied solely to the purposes of the charity and the trade is exercised in the course of the actual carrying out of a primary purpose of the charity'. By s. 30(3): 'In this section the expression 'charity' means any body of persons or trust established for charitable purposes only."

Cohen L.J. said:-

"The question in this case is whether the appellant company, having regard to its objects, is 'established for charitable purposes only."

and again:-

" I feel some doubt whether a company can be said to be established 'for charitable purposes only' if it carried on a substantial non-charitable purpose, for instance, to take the case suggested by Somervell, L.J. during the argument if it took power permanently to run a public house in order to produce funds for its charitable purpose. In this connection, I would refer to certain observations which were made both in this court and in the House of Lords in *Keren Kayemeth Le Jisroel, Ltd. v. Inland Revenue Comrs.* Lawrence L.J., said (17 Tax Cas. 40):-

The instrument with which this case is concerned consists of the memorandum of association of the company and it is essential to bear in mind that in order to obtain exemption from income tax under the section it is not enough that the purposes described in the memorandum should include charitable purposes, the memorandum must be confined to those purposes so that any application by the company of its funds to non-charitable purposes would be ultra vires"

The argument for the Commissioner of Inland Revenue is, *Pemsel's case* (1891) A.C. 531 decided that there is no difference between Income Tax Law and the law of Trusts regarding the principles of

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a charity and since a deed or a memorandum or a constitution of an organisation can only qualify as a charity if its main or dominant purpose is charitable within the meaning of Pemsel's case as qualified and explained by later judicial decisions there is no need in s. 53(3) to legislate for a charitable organisation only because a charitable organisation is one established for charitable purposes only. What is often overlooked when Pemsel's case is referred to in this connection is that Pemsel's case gave a much wider definition to the word "charity" than was being contended for. The Inland Revenue wished to restrict charity to trusts for the relief of poverty, but the Court gave to it the much wider and artificial meaning it has in the law of trusts.

The respondent's view, however, is supported by the case of Williams' Trusts v. Inland Revenue Commissioners (1947) 1 All E.R. 518 where the appellants conceded that the expression "for charitable purposes" means for charitable purposes only.

The moment it is conceded that the word "charity" must be given its technical meaning there is no necessity to speak of a charitable organisation only. A charitable organisation can only be charitable if it is charitable only. But this does not explain the U.K. use of the word "only". The reason is easily discernible. In Guyana it is the donor's portion of income which is exempt from tax; in the U.K. it is the income of the organisation for which provision for exemption is made and that income must be applied to charitable purposes only. Where a hospital, for example, owns immovable property the income from that property if applied to charitable purposes only is exempt from tax; or if the charitable organisation trades its income is tax free if applied to charity only. This is not the position in Guyana, where the income from the organisation is taxable if the income comes from a trade or business carried on by the institution. A charitable organisation has to apply its income from donors to the charitable objects stated in the memorandum or it ceases to be a charitable organisation.

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A consideration of the cases leads me to the conclusion that in the Income Tax Acts (U.K.) the words "for charitable purposes only" were inserted in order to ensure that the income of a trust established for charitable purposes was applied to charitable purposes only.

It was also contended for the appellant that in any event the Citizens Advice and Aid Service was a charitable organisation.

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I will refer to it hereafter as the organisation and set out now the principal features of its constitution for it is from the constitution that a Court determines whether an institution is established for charitable purposes.

The constitution is as follows:-

"NAME AND ESTABLISHMENT OF THE CITIZENS'
ADVICE AND AID SERVICE

1. The name of the organisation hereby established is 'The Citizens' Advice and Aid Service'. (hereinafter referred to as the Service).

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GENERAL AIMS, FUNCTIONS AND OBJECTS OF THE
SERVICE

2. The aims, functions and objects of the Service are:-
 - (a) To provide advice, aid and services on or relating to medical, dental, optical, health, legal, matrimonial, domestic or other social matters;
 - (b) To establish and operate a fund for the assistance of those in need on such terms and conditions as the Central Committee may determine;
 - (c) To encourage thrift and provide savings facilities;
 - (d) To make available to the individual in confidence accurate information and skilled advice on personal problems of daily life;

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- (e) To establish, organise, sponsor or otherwise promote Adult Education and technical training of every kind including the explanation of legislation and Government notices and publications;
- (f) To help the citizen to benefit from and to use wisely the services provided for him by the State;
- (g) In general to advise the Citizen in the many complexities which may beset him; and
- (h) Generally to do anything to assist the citizen, whether financial or otherwise who makes enquiry of the Service and in any way as may be determined by the Central Committee."

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Before undertaking a detailed study of the organisation's clauses as recorded above, I must advert to the recognised approach when construing a document of this nature. The first requirement is to interpret the document itself. There is no ambiguity in the language of Cohen, L.J. in *Tenant Plays Ltd. v. Inland Revenue Commissioners* (1948) 1 All E.R. 507 when he said:-

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"The question in this case is whether the appellant company, having regard to its objects, is 'established for charitable purposes only'."

To the same effect in the same case Somervell, L.J. said:-

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"..... It seems to me that, in construing the clauses of a memorandum - and, indeed, in construing any document - the first thing is to see what they say without having any preconceived notion in one's mind of what one is going to find. No doubt, it may often happen that one finds a dominant purpose stated at the outset to which the paragraphs which come later must be regarded as subordinate."

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There are occasions, of course, when evidence is required to enable a judge to decide whether a trust is for a purpose beneficial to the community. The necessity for evidence under certain circumstances was fully expounded in Commissioners of Inland Revenue v. National Anti-Vivisection Society 28 Tax Cases 311-378. In that case the National Anti-Vivisection Society was a voluntary society governed by rules. The object of the society was the total abolition of vivisection. The Special Commissioners allowed the Crown to lead evidence with the object of proving the great benefits which had accrued to the public by reason of the medical and scientific knowledge which had been obtained through experiments on living animals. On this evidence the Special Commissioners found that a large amount of present day medical and scientific knowledge is due to experiments on living animals. The House of Lords held the Society was not established for charitable purposes only. Lord Simonds in his speech referred to FitzGibbon, L.J.'s words in re Cranston (1898) 1 I.R. 431: "What", he said, "is the tribunal which is to decide whether the object is a beneficent one? It cannot be the individual mind of a Judge, for he may disagree, toto coelo, from the testator as to what is or is not beneficial. On the other hand, it cannot be the vox populi, for charities have been upheld for the benefit of insignificant sects, and of peculiar people. It occurs to me that the answer must be - that the benefit must be one which the founder believes to be of public advantage, and his belief must be at least rational, and not contrary either to the general law of the land, or to the principles of morality".

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Clearly the present case is not one in which evidence would be justified. The evidence which the Court requires is the evidence of a written document. Neither the intention of the Directors of the organisation nor the way they propose to administer the society can help a judge in the construction of the document, and so I propose to confine myself to the avowed objects, bearing in mind that if the dominant purpose of the organisation is charitable ancillary non-charitable objects are not fatal.

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Objects (a) - To provide advice, aid and services on or relating to medical, dental, optical, health, legal, matrimonial, domestic or other social matters.

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10 The learned Chief Justice held that the words "or other social matters" were wide enough to enable those administering the organisation to include social matters which are not objects of charity. This view is not original. A similar argument was addressed to the Court in *Re Wedgwood, Allen v. Wedgwood* All E.R. 1914-1915 Reprint 322 where a testatrix left the capital and income of her residuary estate to Wedgwood absolutely subject to a secret trust that the money should be used at Wedgwood's absolute discretion for the protection and benefit of animals. Kennedy, L.J. dealing with the argument that the bequest was too vague to qualify as a charitable gift said:-

20 "It was contended in the argument addressed to us against the validity of this particular bequest as a charitable gift that it fails on account of such vagueness and generality of expression as would justify its application by the trustee to the protection and maintenance of noxious animals, and be instanced, if I remember rightly, lions and tigers. Now, it is quite true, as laid down by Lindley, L.J., in *Re Macduff, Macduff v. Macduff* (1896) 2 Ch. at pp. 463, 464), that when we are
30 dealing with general words we must consider whether there is such an indication of purpose or of trust that the court, if called upon to execute it, can see what it has to do - can see the limits of its own powers."

Holmes, L.J. in *Re Cranston* also said:-

40 "Gifts, the object of which is to prevent cruelty to animals and to ameliorate the position of the brute creation, are charitable. If it is beneficial to the community to promote virtue and to discourage vice, it must be beneficial to teach the duty of justice and fair treatment to the brute creation, and to repress one of the most revolting kinds of cruelty."

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I would like to stress the words "it is beneficial to the community to promote virtue and to discourage vice". Surely a judge who has to interpret the law must take cognisance of the vices in his country. He cannot be expected to isolate his mind and exist in a dream world. Everyone knows that Guyana has passed through fire and brimstone and emerged from the bitterness of racial conflict with scars on the body and soul of its people. What greater act of charity can there be for an organisation to give advice, aid and services to its people in social matters within the context of the community in which we live. Reconciliation, forgiveness, both come within the ambit of social matters as contemplated in the clause. It is said that a dance or a concert may be organised and the Attorney General will be unable to invoke the Court's powers to prevent the organisation exceeding its objects. I answer this in the words of Kennedy L.J.: "..... the court, if called upon to execute it, can see the limits of its own powers".

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One of the most revolting kinds of cruelty is to be unkind to the brute creation; in an emergent country where poverty abounds does kindness to a section of the human race count for nothing? Aid and services, not services alone, but aid relating to social matters. Aid to a people whose minds are disturbed, who are anxious about the future. I have no hesitation in holding that the object is a charitable one.

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The Chief Justice found that object (d) was too wide. The object is:-

"to make available to the individual in confidence accurate information and skilled advice on personal problems of daily life."

In order to be valid this object must fall within Lord Macnaghten's fourth category in *Income Tax Special Commissioners v. Pemsel* (1891) A.C. 583, viz: "trusts for other purposes beneficial to the community". Lord Simonds in *National Anti-Vivisection Society v. Inland Revenue Commissioners* (1948) Law Reports 64 in pointing out that both before and after the Statute of 43 Elizabeth it became the duty of the Court of

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Chancery to determine what objects were and what were not charitable, went on to say:-

10 "The task of the court was in some degree simplified by the Statute of Elizabeth, which made it clear that at least the purposes enumerated in the preamble were charitable, but from the beginning it appears to have been assumed that the enumeration was not exhaustive and that those purposes also were charitable which could be fairly regarded as within its spirit and intendment. This view enabled the court to extend its protection to a vast number of objects which appeared both to the charitable donor and to it to be for the benefit of the community."

20 In the earlier case of Williams Trusts v. Inland Revenue Commissioners (1947) 1 All E.R. 518 Lord Simonds had said:-

30 "My Lords, there are, I think, two propositions which must ever be borne in mind in any case in which the question is whether a trust is charitable. The first is that it is still the general law that a trust is not charitable and entitled to the privileges which charity confers unless it is within the spirit and intendment of the preamble to 43 Eliz. c.4, which is expressly preserved by s. 13(2) of the Mortmain and Charitable Uses Act, 1888."

40 No one who reads the objects of the organisation with which we are concerned can question the fact that it exists for purposes beneficial to the community. But are the objects within the spirit and intendment of the preamble to 43 Elizabeth? The Courts have never confined themselves to the objects therein mentioned but have treated those objects as a guide. In the 350 years which have elapsed since the list was formulated great social changes have taken place; the young tradesman may still need financial help as he did in 1601, but today accurate information and skilled advice may be more important than money. Polytechnics, county schools, training centres, all exist to

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(Contd.)

overcome the barrier of financial stringency which in former times would make professional achievement impossible to those of slender means. This is not the real problem of this age; the excitement experienced from taking certain drugs; the lure of great wealth from armed robbery, to mention but two growing evils, are problems which confront the young in countries all over the world. I reject the idea that charity today in its legal sense must be the only virtue handicapped by the image of the seventeenth century. When we speak now of whether an object of intended charity is within the spirit and intendment of examples given 300 years ago we must recall the evils of the past generation and contrast them with the evils of this generation, for the whole basis was to give guidance to Commissions of Enquiry who had to determine whether gifts to certain existing institutions were charitable. An important test was clearly poverty but underlying it all was aid and advice. One of the objects was the maintenance of the sick, a truly charitable object when medical attention was expensive and difficult to obtain, but even then advice and good cheer were equally important. If then, why not now. It is said problems of daily life are varied and numerous; too vague to qualify as a charity. Varied and numerous, yes, but too vague? Is any problem too vague to the individual concerned? To the man or woman depressed or anxious, no problem is unimportant. Advice is often needed and advice is what this organisation offers. I consider the clause a good charitable object.

10

20

30

The other clause which was held to be non-charitable was clause (g):-

"in general to advise the citizen on the many complexities which may beset him;"

There is really very little difference between this clause and clause (d), and as I have held the giving advice to a citizen is a good charitable purpose, this clause does not infringe the law.

40

Although the judge held the other clauses of the organisation to be charitable counsel for the respondent contended that the judge was in

error in so finding. The only concession he made was in respect of clause (f). In dealing with clauses (a) and (d) I set out my views generally and no useful purpose will be served by repeating them. On the whole I am persuaded that the organisation is a charitable one and I would allow the appeal with costs.

Dated this 6th day of June, 1967.

KENNETH S. STOBY

Chancellor.

In the Court
of Appeal of
the Supreme
Court of
Judicature

No. 7
Judgment of
The Chancellor,
6th June, 1967.
(Contd.)

In the Court
of Appeal of
the Supreme
Court of
Judicature

No. 8

ORDER ON JUDGMENT

No. 8
Order on
Judgment,
6th June, 1967.

IN THE COURT OF APPEAL OF THE
SUPREME COURT OF JUDICATURE

CIVIL APPEAL No. 45 of 1964

10

B E T W E E N :-

PETER STANISLAUS D'AGUIAR

(Appellant)
Appellant

- and -

THE COMMISSIONER OF INLAND REVENUE

(Respondent)
Respondent

BEFORE THE HONOURABLE SIR KENNETH STOBY, Chancellor
THE HONOURABLE MR. E.V. LUCKHOO, Justice of
Appeal and
THE HONOURABLE MR. G.L.B. PERSAUD, Justice
of Appeal.

20

DATED the 6th day of June, 1967

ENTERED the 21st day of November, 1967

UPON READING the notice of appeal on behalf of
the abovenamed appellant dated the 25th day of
November, 1964 and the record of appeal filed
herein on the 4th day of March, 1966.

AND UPON HEARING Mr. G.M. Farnum, Q.C. of
Counsel for the appellant and Mr. M. Shahabuddeen,
Q.C., of Counsel of the respondent.

30

AND UPON MATURE DELIBERATION THEREUPON HAD.

IT IS ORDERED that the Judgment of the
Honourable Sir Joseph Luckhoo, Chief Justice dated

55.

the 17th day of October, 1964 in favour of the respondent be affirmed and this appeal dismissed with costs to be taxed certified fit for two (2) Counsel and paid by the said appellant to the said respondent.

In the Court
of Appeal of
the Supreme
Court of
Judicature

BY THE COURT

H. MARAJ

Sworn Clerk & Notary Public
for Registrar.

No. 8
Order on
Judgment,
6th June, 1967.
(Contd.)

In the Court
of Appeal of
the Supreme
Court of
Judicature

No. 9

ORDER GRANTING CONDITIONAL LEAVE
TO APPEAL TO HER MAJESTY IN COUNCIL

IN THE COURT OF APPEAL OF THE
SUPREME COURT OF JUDICATURE

CIVIL APPEAL No. 45 of 1964

No. 9
Order granting
conditional
leave to
appeal to Her
Majesty in
Council,
29th July,
1967.

B E T W E E N :-

PETER STANISLAUS D'AGUIAR
(Appellant)
Appellant

10

- and -

THE COMMISSIONER OF INLAND REVENUE
(Respondent)
Respondent

BEFORE THE HONOURABLE MR. JUSTICE V.E. CRANE,
Justice of Appeal (Ag.) (In Chambers)

20

SATURDAY the 29th day of July, 1967

ENTERED the 1st day of August, 1967.

UPON the petition of the above-named appellant dated the 26th day of June 1967 for leave to appeal to Her Majesty in Council against the judgment of the Court comprising the Honourable Sir Kenneth Stoby, Chancellor, the Honourable Mr. E.V. Luckhoo, Justice of Appeal and the Honourable Mr. Justice G.L.B. Persaud, Justice of Appeal delivered herein on the 6th day of June 1967:

30

AND UPON READING the said petition and the affidavit of Mr. Joseph Edward De Freitas, Solicitor, in support thereof sworn to on the 26th day of June 1967 and filed herein:

AND UPON HEARING Mr. G.M. Farnum, Queen's Counsel, of counsel for the appellant and Mr. Dhurjon, Crown Counsel, of counsel for the respondent:

THE COURT DOTH ORDER that subject to the performance by the said appellant of the conditions hereinafter mentioned and subject also to the final order of this Honourable Court upon due compliance with such conditions leave to appeal to Her Majesty in Council against the said judgment of the Court of Appeal of the Supreme Court of Judicature be and the same is hereby granted to the appellant:

In the Court of Appeal of the Supreme Court of Judicature

No. 9

Order granting conditional leave to appeal to Her Majesty in Council, 29th July, 1967.

(Contd.)

10 AND THIS COURT DOTH FURTHER ORDER that the appellant not later than the 30th day of September 1967 do enter into good and sufficient security to the satisfaction of the Registrar of this Court in the sum of £2,400: (two thousand four hundred dollars) with one or more sureties or deposit into Court the said sum of £2,400: (two thousand four hundred dollars) for the due prosecution of the said appeal and for the payment of all such costs as may become payable to the respondent in the event of the appellant not obtaining an order
20 granting him final leave to appeal or of the appeal being dismissed for non-prosecution or for the part of such costs as may be awarded by the Judicial Committee of the Privy Council to the respondent on such appeal:

30 AND THIS COURT DOTH FURTHER ORDER that all costs of and occasioned by the said appeal shall abide the event of the said appeal to Her Majesty in Council if the said appeal shall be allowed or dismissed or shall abide the result of the said appeal in case the said appeal shall stand dismissed for want of prosecution:

40 AND THIS COURT DOTH FURTHER ORDER that the appellant do on or before the 30th day of November 1967 in due course take out all appointments that may be necessary for settling the record in such appeal to enable the Registrar of this Court to certify that the said record has been settled and that the provisions of this Order on the part of the appellant have been complied with:

AND THIS COURT DOTH FURTHER ORDER that the appellant be at liberty to apply at any time within five (5) months from the date of this Order for final leave to appeal as aforesaid on

In the Court
of Appeal of
the Supreme
Court of
Judicature

the production of a Certificate under the hand of
the Registrar of this Court of due compliance on
his part with the conditions of this Order.

LIBERTY TO APPLY.

No. 9
Order granting
conditional
leave to
appeal to Her
Majesty in
Council,
29th July,
1967.
(Contd.)

BY THE COURT

Sgd. H. MARAJ

SWORN CLERK & NOTARY PUBLIC
for REGISTRAR.

No. 10

ORDER GRANTING FINAL LEAVE TO APPEAL
TO HER MAJESTY IN COUNCIL

IN THE COURT OF APPEAL OF THE
SUPREME COURT OF JUDICATURE

CIVIL APPEAL No. 45 of 1964

10

B E T W E E N :-

PETER STANISLAUS D'AGUIAR
Appellant,

- and -

THE COMMISSIONER OF INLAND REVENUE
Respondent.

BEFORE THE HONOURABLE MR. G.L.B. PERSAUD, Justice
of Appeal (In Chambers)

20

DATED the 2nd day of March, 1968

ENTERED the 6th day of March, 1968

UPON the petition of the abovenamed Peter Stanislaus D'Aguiar dated the 27th day of December, 1967 preferred into this court on this day for final leave to appeal to Her Majesty in Her Majesty's Privy Council against the judgment of this court dated the 6th day of June, 1967.

30

AND UPON READING the said petition and the Order of the Court dated the 29th day of July, 1967.

AND UPON HEARING Counsel for the petitioner and for the respondent and being satisfied that the terms and conditions imposed by the said Order dated the 29th day of July, 1967 have been complied with.

THIS COURT DOTH ORDER that final leave be

In the Court
of Appeal of
the Supreme
Court of
Judicature

No. 10
Order granting
final leave to
appeal to Her
Majesty in
Council,
6th March,
1968.

In the Court
of Appeal of
the Supreme
Court of
Judicature

and is hereby granted to the said petitioner
to appeal to Her Majesty in Her Majesty's Privy
Council.

BY THE COURT

No. 10
Order granting
final leave to
appeal to Her
Majesty in
Council,
6th March,
1968.

Seal

H. MARAJ

SWORN CLERK AND NOTARY
PUBLIC FOR REGISTRAR

EXHIBIT "A(i)", LETTER, INLAND REVENUE
DEPT., GEORGETOWN TO APPELLANT

In the Supreme
Court of
Guyana

CDV/BHK

474/13

INLAND REVENUE DEPARTMENT,
Income Tax Division
P.O. Box 24,
Georgetown,
BRITISH GUIANA

"A(i)"
Letter,
Inland Revenue
Dept. George-
town to
Appellant,
24th August,
1962.

10

24th August, 1962
FREEDOM YEAR

Sir,

With reference to your Income Tax return for the Year of Assessment 1962 (Income 1961), I should be grateful if you would submit your receipt for payments made during 1961 to St. Joseph's Convent under Deed of Covenant.

20

2. Kindly note that your claim for the payment of \$4,200.00 to the Citizens' Advice and Aid Service cannot be allowed as a deduction from your income, as this body is not regarded as a Charitable Institution for Income Tax purposes.

3. I have observed that you have not submitted the original dividend Warrant for dividends received from J.P. Santos & Co. Ltd., on 29th April, 1961, and I am requesting that you submit this warrant in order that the set off can be granted to you.

30

I have the honour to be,
Sir,
Your obedient servant,

Sgd. A. Chung-Wee

for Commissioner of Inland Revenue.

Mr. Peter S. D'Aguiar,
"Byways"
Kitty, E.C.D.

In the Supreme
Court of
Guyana

EXHIBIT "A(ii)"

DEED OF COVENANT BETWEEN APPELLANT
AND THE CITIZENS' ADVICE AND AID SERVICE

"A(ii)"
Deed of
Covenant
between
Appellant and
the Citizens'
Advice and
Aid Service,
23rd May,
1961.

THIS DEED OF COVENANT made this 23rd day of
May 1961.

BETWEEN PETER STANISLAUS D'AGUIAR of "BYWAYS"
KITTY, hereinafter called "the Benefactor(s)" of
the one part, and THE CITIZENS' ADVICE AND AID
SERVICE of Lot 35, High Street, Georgetown, (here-
inafter called "The Service") of the other part.

10

WITNESSETH that the Benefactor(s) hereby
covenant(s) with the Service to pay to the Service,
out of the income of the Benefactor(s) an annual
payment or annuity of \$4,200.00 payable on or
before the 31st December, 1961 in each year, the
first payment to be made on or before 31st
December, 1961 for a period of three years
(provided the Benefactor(s) be then living), for
the benefit of the Service.

20

IN WITNESS WHEREOF the Benefactor(s) has/have
hereunto executed this Deed under seal in the
presence of the subscribing witnesses.

WITNESSES:

1. (Sgd) C.A. Nascimento Sgd. P.S. D'Aguiar
C.A. Nascimento P.S. D'Aguiar

2. (Sgd) C.H. Da Silva
C.H. Da Silva

30

EXHIBIT "B"

LETTER, APPELLANT TO INLAND REVENUE
DEPT., GEORGETOWN

In the Supreme
Court of
Guyana

D'AGUIAR BROS. LTD.

D'AGUIAR'S IMPERIAL HOUSE
Croal St. & Brickdam
GEORGETOWN-BRITISH GUIANA

28th September, 1962

"B"
Letter,
Appellant to
Inland Revenue
Dept., George-
town,
28th September,
1962.

10

Commissioner of Inland Revenue,
Inland Revenue Department,
Income Tax Division,
GEORGETOWN.

Dear Sir,

20 In reply to your letter of 24th August, as
far as I remember, I sent original Dividend
Warrants from J.P. Santos & Coy. Ltd., in respect
of one-half of the year. I have been unable to
locate the Warrants in respect of the other half
year.

Would you be good enough to look up last
year's returns and see if by chance a warrant
for the half year in respect of the year of Assess-
ment 1962, was sent to you in 1961 instead.

30 As regards the Citizens' Advice and Aid
Service, I understand that this is being con-
sidered and will in fact receive your favourable
consideration.

Yours faithfully,

?

P.S. D'Aguiar
Managing Director,
D'AGUIAR BROS. LTD.

PSA:TK

In the Supreme
Court of
Guyana

EXHIBIT "C(i)"

INCOME TAX ASSESSMENT, FROM INLAND
REVENUE TO APPELLANT

"C(i)"

Income Tax
Assessment,
from Inland
Revenue to
Appellant.

474/13

Peter S. D'Aguiar

Computation

Year of Assessment 1961

10

Bank Breweries Ltd., (Director's Fees)	§ 3,600.00	
Hand-in-Hand Mutual Fire Insurance Co. Ltd.	323.44	
Member of Legislative Assembly	717.74	
D'Aguiar Bros. Ltd.	14,400.00	
	<u>19,041.18</u>	

Less Deed of Covenant
payments

2,000.00

C/F § 17,041.18

20

Dividends: Self:		
D'Aguiar Bros. Ltd.	§22,080.00	
Wife: D'Aguiar Bros. Ltd.	5,520.00	
J.P. Santos & Co. Ltd.	4,036.36	
Heirs of DeFreitas Ltd.	160.00	
Demerara Tobacco Co. Ltd.	90.90	
	<u>§31,887.26</u>	

30

Interest:

6 Debentures 927.00

32,814.26

Trinidad War Loan
as per information slip

460.00

50,315.44

Deduct allowances:

Self § 800.00

Wife 600.00

Children 600.00

Insurance 3,252.59

5,252.59

40

Chargeable Income - §45,062.85

65.

Tax at Scale:	\$13,200:	\$4,680.00
	<u>31,862: @ 70 ¢</u>	<u>22,303.40</u>
	\$45,062	\$26,983.40
Less Tax already paid -		<u>14,349.26</u>
	To pay	<u>\$12,634.14</u>

In the Supreme
Court of
Guyana

"C(i)"
Income Tax
Assessment,
from Inland
Revenue to
Appellant.
(Contd.)

10

Sgd. W.G. Stoll

Commissioner of Inland Revenue.

In the Supreme
Court of
Guyana

EXHIBIT "D"

LETTER, CAMERON & SHEPHERD TO
INLAND REVENUE

"D"

Letter,
Cameron &
Shepherd to
Inland Revenue,
21st December,
1962.

CAMERON & SHEPHERD,
SOLICITORS.

2, High Street,
Georgetown, Demerara.
British Guiana.

10

21st December, 1962.

Commissioner of Inland Revenue,
Income Tax Division,
G.P.O. Building,
Georgetown.

Dear Sir,

Mr. P.S. D'Aguiar -
Re: Assessment No. 5940B/62

20

We are instructed by our client, Mr. P.S. D'Aguiar, to inform you that he disputes the above-mentioned assessment and to give you notice of his objections thereto on the following grounds, namely, that you have disallowed -

- (a) a deduction of \$400.00 being expenditure wholly, exclusively and necessarily incurred in the production of the income and in remunerating for November and December, 1961, his political Secretary whom he employs at a salary of \$200.00 per month on account of his office as a member of the Legislative Assembly: and
- (d) deductions of \$1,000.00 and \$4,200.00 being payments, made by him to the Convent of Mercy and the Citizens' Aid and Advice Service, respectively, under

30

Deeds whereby his income has been transferred, assigned or otherwise disposed of for a period exceeding two years for the benefit of an ecclesiastical, charitable or educational institution or endowment of a public character.

2. Application is hereby made to you to review and revise the assessment accordingly.

Yours faithfully,

Sgd. Cameron & Shepherd.

In the Supreme
Court of
Guyana

"D"

Letter,
Cameron &
Shepherd to
Inland Revenue,
21st December,
1962.

(Contd.)

In the Supreme
Court of
Guyana

EXHIBIT "E"

LETTER, INLAND REVENUE TO APPELLANT

"E"

Letter,
Inland Revenue
to Appellant,
11th January,
1963.

In replying
please quote
Date and Ref:
474/13

INLAND REVENUE DEPARTMENT,
(Income Tax Division),
P.O. Box 24,
Georgetown.

11th January, 1963.

10

Sir,

Assessment No. 594OB/62

I have to acknowledge receipt of your letter dated 21st December, 1963.

2. Kindly note that under Section 67(2) of the Income Tax Ordinance, Chapter 299, collection of the tax in dispute \$3,920.00 will be held in abeyance until such time as your objection can be determined.

3. The tax not in dispute \$8,714.14 is due and payable on or before 4th February, 1963.

20

I have the honour to be,
Sir,
Your obedient servant,

Sgd. G.L. Gullin,

for Commissioner of Inland Revenue

Mr. P.S. D'Aguiar,
D.I.H.
Brickdam.

EXHIBIT "F"

LETTER, INLAND REVENUE TO APPELLANT

In the Supreme
Court of
Guyana

CDV/LPJ
474/13^{II}

INLAND REVENUE DEPARTMENT,
Income Tax Branch,
P.O. Box 24,
Georgetown.
BRITISH GUIANA.

"F"
Letter,
Inland Revenue
to Appellant,
23rd February,
1963.

10

23rd February, 1963.

Sir,

Assessment No. 5940B/1962

I have to inform you that I have under consideration your objection against the above assessment and have to request that:-

- (a) you submit your receipt in support of the payment during 1961 of \$1,000 Under Deed of Covenant to the St. Joseph's Convent;
- 20 (b) you state the full name and address of your Legislative Secretary to whom you paid \$400 as salary for 1961;
- (c) you state whether you had, and if not why you had not, reported the name and address of your Legislative Secretary as is required by Section 41(2) of the Income Tax Ordinance Chapter 299.

2. I should be grateful for an early reply.

30 I have the honour to be,
Sir,
Your obedient servant,

Sgd. C.D. Veacock

for Commissioner of Inland Revenue

Mr. Peter S. D'Aguiar,
D'Aguiar Bros. Ltd.,
Brickdam.

In the Supreme
Court of
Guyana

EXHIBIT "G"

LETTER, CAMERON & SHEPHERD TO
INLAND REVENUE

"G"

Letter,
Cameron &
Shepherd to
Inland Revenue,
5th March,
1963.

CAMERON & SHEPHERD
SOLICITORS

2, High Street,
Georgetown, Demerara,
British Guiana.

5th March, 1963.

10

Commissioner of Inland Revenue,
Inland Revenue Department,
Income Tax Branch,
P.O. Box 24, Georgetown.

Dear Sir,

Re: P.S. D'Aguiar - Objection to
Assessment No. 5940B/1962

Your letter of the 23rd ult. has been forwarded
to us by Mr. P.S. D'Aguiar on whose behalf we gave
Notice of Objection on the 21st December, 1962.

20

We enclose letter from the Principal of St.
Joseph's High School dated 15th February, 1961
acknowledging the receipt of cheque for \$1,000:-.

The full name and address of Mr. D'Aguiar's
Legislative Secretary are:-

(Mrs.) Thora Monica King,
84 David Street,
Kitty,
East Coast Demerara.

30

Mr. D'Aguiar was not aware that he was
required to send in any return in respect of this
employee and in any event returns and notices
such as these are usually attended to on his
behalf by the Secretary of D'Aguiar Bros. Ltd.
who, no doubt, overlooked doing so owing to the
civil disturbances then prevailing or to the fact
that she was a new employee of Mr. D'Aguiar or
that her remuneration did not exceed \$500:-.

71.

If you wish him to go through the formality of sending in for this year a form (really intended for numerous employees), will you please send one to us for completion by him.

Yours faithfully,
Sgd. Cameron & Shepherd.

10

Encl.

c.c. P.S. D'Aguiar.

In the Supreme
Court of
Guyana

"G"
Letter,
Cameron &
Shepherd to
Inland Revenue,
5th March,
1963.
(Contd.)

In the Supreme
Court of
Guyana

EXHIBIT "H(i)"

LETTER, INLAND REVENUE TO APPELLANT

"H(i)"
Letter,
Inland Revenue
to Appellant,
10th July,
1963.

CDV/PDB
474/13

INLAND REVENUE DEPARTMENT,
Income Tax Division,
P.O. Box 24,
Georgetown,
BRITISH GUIANA.

10th July, 1963.

10

Sir,

Assessment 5940B/1962

With reference to your objection against the above assessment, I have to inform you that:-

- (a) your claim for the deduction of \$400 paid to Mrs. Thora King as your Parliamentary Secretary during 1961, has been allowed;
- (b) your payment of \$1,000 under Deed of Covenant to the Convent of Mercy has been allowed as a deduction;
- (c) Your claim for the deduction of \$4,200 in respect of payment under Deed of Covenant to the Citizens' Aid and Advice Service, cannot be allowed, for this body is not regarded as a Charitable Institution for Income Tax purposes.

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2. I have therefore reduced my assessment by \$1,400 and tax amounting to \$980,00 has been discharged.

30

3. The balance of the tax of \$3,920 which was held in abeyance, is \$2,940 and this sum is now due and payable on or before 25th August, 1963.

4. I desire to point out to you that if you are not in agreement with my decision as set

73.

out at paragraph 1(b) above, you may appeal to the Board of Review or to a Judge in Chambers, the particulars of which procedure are attached for your guidance.

I have the honour to be,
Sir,
Your obedient servant,

Sgd. W.G. Stoll

Commissioner of Inland Revenue.

In the Supreme
Court of
Guyana

"H(i)"
Letter,
Inland Revenue
to Appellant,
10th July,
1963.
(Contd.)

10

Mr. Peter S. D'Aguiar,
84 David Street,
Kitty.

In the Supreme
Court of
Guyana

EXHIBIT "H(iii)"

DECISION OF THE INCOME TAX BOARD OF REVIEW

"H(iii)"
Decision of
the Income Tax
Board of
Review,
28th April,
1964.

No. 24 of 1963

BRITISH GUIANA

INCOME TAX BOARD OF REVIEW

In the matter of the Income
Tax Ordinance, Chapter 299.

10

B E T W E E N :-

Peter Stanislaus D'Aguiar
of Byways, Public Road,
Kitty East Coast Demerara.

Appellant

- and -

The Commissioner of Inland Revenue
Respondent

20

23rd and 28th January, 1964

BEFORE:- E.M. Duke, LL.B., C.B.C. (Chairman)
S. Heald, F.C.A. (Member)
C.L. Kranenburg, O.B.E. (Member)
P.W. King, C.B.E. (Member)

Appearances:-

Mr. G.M. Farnum, Barrister-at-Law,
for Appellant.

Mr. V.J. Gangadin, Deputy
Commissioner of Inland
Revenue for Respondent.

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In Attendance:-

Mr. C.H. Da Silva, Hon. Director,
Citizens' Advice and Aid
Service.

Mr. C. Veacock of the Department
of Inland Revenue.

DECISION

The matter to be determined by the Board of
Review is whether, by virtue of a Deed of Covenant

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executed on the 23rd day of May, 1961, the Appellant, Mr. Peter Stanislaus D'Aguiar of "Byways", Public Road, Kitty who therein undertook to pay out of his income, commencing in the year 1961, to the Citizens' Advice and Aid Service, a local but unincorporated Organization, a sum of \$4,200: annually for a period of three years, is eligible under the provisions of the Income Tax Ordinance, Chapter 299 as amended by Section 7(1) of Ordinance, No. 4 of 1958, to have deducted from his income of the year ended 31st December, 1961, the annuity so paid in respect of Income Tax Assessment for the year 1962.

In the Supreme Court of
Guyana

"H(iii)"
Decision of
the Income Tax
Board of
Review,
28th April,
1964.
(Contd.)

According to Assessment Notice No. 5940B/1962 dated 14th November, 1962, no abatement of the Appellant's income was allowed in regard to the annuity paid during the year 1961. The tax involved is \$2,940: (7% of \$4,200.00).

It was intimated to the Appellant by letter dated 24th August, 1962 that the Citizens' Advice and Aid Service is not regarded as a charitable institution for income tax purposes.

The Commissioner of Inland Revenue had consulted the Law Officers of the Crown, the opinion expressed by the Solicitor General being:-

"I have to refer to your memorandum No. E/105^D of the 28th March, 1962, and enclosures therewith on the above subject and have to inform you that I am of the opinion that the objects of the Citizens' Advice and Aid Service are not wholly charitable. As a result the organisation would not qualify to be ranked as such for the purposes of section 53 of the Income Tax Ordinance.

Sgd. K. George

for Solicitor General

The Appellant, through his Solicitors, Messrs. Cameron & Shepherd, objected to the Assessment. Messrs. Cameron & Shepherd maintained that the Citizens' Advice and Aid Service falls within the ambit and scope of the

In the Supreme Court of Guyana qualifying requirements of Section 53(3) of the Income Tax Ordinance.

"H(iii)"
Decision of
the Income Tax
Board of
Review,
28th April,
1964.
(Contd.)

The Commissioner of Inland Revenue after carefully reviewing the matter notified the Appellant that he did not agree and confirmed the assessment.

It should be recorded that in March, 1962, Messrs. C.H. Da Silva and C. Thorne, two Honorary Directors of the Citizens' Advice and Aid Service had approached the Commissioner of Inland Revenue seeking his approval for the Service to be regarded as a Charitable Organization under Section 53(3) of the Income Tax Ordinance, Chapter 299. In their letter of Application mention was made that the Service is patterned on (but not an affiliate of) the United Kingdom Citizens' Advice Bureaux Service, 26 Bedford Square, London, W.C.1. The Constitution of the U.K. (organisation does not provide for affiliates). The following extract from the Constitution of the local organization acts out the General Aims, Functions and Objects.

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20

CONSTITUTION
of
THE CITIZENS' ADVICE AND AID SERVICE

NAME AND ESTABLISHMENT OF THE CITIZENS'
ADVICE AND AID SERVICE

1. The name of the organization hereby established is "The Citizens' Advice and Aid Service" (hereinafter referred to as the Service).

30

GENERAL AIMS, FUNCTIONS AND
OBJECTS OF THE SERVICE

2. The aims, functions and objects of the Service are:-

- (a) To provide advice, aid and services on or relating to medical, dental, optical, health, legal, matrimonial, domestic or other social matters;
- (b) To establish and operate a fund for the assistance of those in need on such terms

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and conditions as the Central Committee may determine.

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- 10 (c) To encourage thrift and provide savings facilities.
- (d) To make available to the individual in confidence accurate information and skilled advice on personal problems of daily life.
- (e) To establish, organise, sponsor or otherwise promote Adult Education and technical training of every kind including the explanations of legislation and Government notices and publications.
- (f) To help the Citizen to benefit from and to use wisely the services provided for him by the State.
- 20 (g) In general to advise the citizen in the many complexities which may beset him, and
- (h) Generally to do anything to assist the citizen, whether financial or otherwise who makes enquiry of the Service and in any way as may be determined by the Central Committee.

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30 In a subsequent letter, the same two Directors in acknowledging the Commissioner's letter informing them that the Law Officers of the Crown did not consider the Service wholly charitable and so did not qualify to be ranked as such for the purposes of section 53 of the Income Tax Ordinance notified the Commissioner that the Constitution of the Service was amended by the introduction of the following new clauses:-

PURPOSES OF THE SERVICE

- (a) The Service is established for charitable purposes only.
- 40 (b) In particular the Service is established to promote any charitable purposes for the benefit of the community in British

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Guiana (hereinafter called the "area of benefit") by the advancement of education, the furtherance of health and the relief of poverty, distress and sickness.

- (c) In furtherance of the purposes hereinbefore defined, but not further or otherwise, the Service may:-
- (i) Provide centres for the supply of advice and guidance. 10
 - (ii) Obtain, collect and receive money and funds by way of contributions, donations, legacies, grants and any other lawful method, and accept and receive gifts of poverty of any description (whether subject to any special trusts or not).
 - (iii) Procure to be written and print, publish, issue and circulate gratuitously or otherwise any reports or periodicals books pamphlets, leaflets or other documents. 20
 - (iv) Promote, encourage or undertake organised research and experimental work.
 - (v) Arrange and provide for or join in arranging and providing for the holding of exhibitions, meetings, lectures and classes. 30
 - (vi) Affiliate or become affiliated to any charitable body having charitable purposes or a charitable purpose only as its objects or object and acquire and undertake all or any part of the assets, liabilities and engagements of any such body which the Service may lawfully acquire." 40

New Clause 10A

"ENDOWMENTS"

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10A The Central Committee may obtain, collect and receive donations or endowments and shall apply them as and when they think fit for the general purpose of the Service."

New Clause 16"DISSOLUTION"In the Supreme
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Guyana"H(iii)"Decision of
the Income Tax
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(Contd.)

16 The Service may at anytime be dissolved by a resolution passed by a two-thirds majority of those present and voting at a special General Meeting convened for the purpose of which not less than 21 days notice shall have been given to all members of the Committee and duly published in the area of benefit. The property and assets of the Service shall not be paid to or distributed among the members of the Committee but shall be applied to such other charitable purposes in the area of benefit or for such other charitable purposes in furtherance of Citizens' Advice and Aid Service work as the Central Committee with the agreement of the Inland Revenue Department may determine."

20 The Directors explained that the above inclusions "merely enshrined" the Original intentions when the Service was established in May, 1961, and do not involve any change in principle in the policies of the Service.

30 At an interview on 8th September, 1962 it was explained to the Directors that examination had disclosed that the Constitution of the local Service was not made along the same lines as that of the National Citizens' Advice Bureaux Committee of the U.K." The Directors were, however, informed that if they were prepared to adopt a new constitution in conformity with the objects of the U.K. Organisation, the recognition sought would be given. This advice confirmed in writing by the Commissioner has apparently been ignored.

COMMISSIONER'S REASONS IN SUPPORT OF HIS DECISION are reproduced hereunder:-

40 (i) that under the provisions of Section 53(3) of the Income Tax Ordinance, Chapter 299, as amended by Section 7(i) of Income Tax (Amendment) Ordinance 1958 No. 4 of 1958 - and Section 33 of Income Tax Amendment Ordinance 1962 No. 11 of 1962 - where any person otherwise than for valuable consideration, transferred, assigned or otherwise disposed of the right to any income for a period exceeding two years or for the remainder of his life to or for the benefit of

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any ecclesiastical, charitable or educational institution organisation or endowment of a public character, such income as may be transferred, assigned or otherwise disposed of would not be treated as the income of the transferor for the purpose of income tax;

(ii) that, on the other hand, where a person transfers otherwise than for valuable consideration the right to any income for a period exceeding, two years or for the remainder of his life to or for the benefit of an organisation which is not an ecclesiastical, charitable or educational organisation of a public character, the income so transferred would remain the income of the transferor for the purpose of income tax;

10

(iii) that the "Citizens' Advice and Aid Service" was not an ecclesiastical, charitable or educational organisation of a public character during the year 1961, the relevant year of income in this appeal, nor has it been an ecclesiastical, charitable or educational organisation of a public character during the year 1962 and 1963 to the date of this appeal;

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(iv) that the first occasion on which the Commissioner was asked to give recognition to the aforementioned organisation was on the 14th March, 1962: (Refer to Exhibit "I");

(v) that the copy of the Minutes of the inaugural meeting of the aforementioned organisation revealed that the meeting was held on the 28th May, 1961, the Minutes were approved on the 19th July, 1962 and that Mr. Lionel Luckhoo, Q.C., one of the persons in attendance stated that: "The Service is more than a charity it will help people to help themselves";

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(vi) that under the provisions of Section 8, Chapter 2 of the Civil Law of British Guiana, the English Mortmain and Charitable Uses Act, 1888, is recognised as the law applicable to charities in British Guiana and that by English Law only those organisations which are established for charitable purposes only have been held to be charitable;

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(vii) that in C.I.R. v City of Glasgow Police Athletic Association, 34 T.C. at page 76, Lord

Norman said, "If an association has two purposes, one charitable and the other not, and if the two purposes are so related that the non-charitable purposes cannot be regarded as incidental to the other, the association is not a body established for charitable purposes only";

10 (viii) that in the Oxford Group v C.I.R. (1949) 31 T.C., at page 221, Lord Cohen said, "If a non-charitable object is itself one of the purposes of the body of persons and it is not merely incidental to charitable purposes, the body of persons is not formed for charitable purposes only";

(ix) that the general aims, functions and objects of the "Citizens' Advice and Aid Service" include purposes which are clearly non-charitable and which are not merely incidental to its charitable purposes, as evidenced in its Constitution which, inter alia, shows the following purposes:-

- 20 (a) To encourage thrift and provide savings facilities;
- (b) to help the citizen to benefit from and to use wisely the services provided for him by the State;
- (c) in general to advise the citizen in the many complexities which may beset him;
- 30 (d) generally to do anything to assist the citizen whether financial or otherwise. Refer to Exhibit "I(ii)".

40 (x) that since his letter dated 15th September, 1962 addressed to the Honorary Directors of the aforementioned organisation expressing his willingness to recognise the organisation as charitable provided its constitution was amended to conform with that of the "National Citizens' Advice Bureaux Committee" of England, no further communication was received from them and the Commissioner is left to conclude that the "Service" did not wish to pursue the matter of being recognised as a charitable organisation of a public character for the purpose of income tax;

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(xi) that, in fact, the amount of \$4,200: paid to the "Citizens' Advice and Aid Services" under Deed by the Appellant during the year 1961, the year of income preceding the Year of Assessment 1962, remained the income of the Appellant for income tax purposes and was correctly assessed in the hands of the Appellant.

STATEMENT OF REASONS ADVANCED
IN SUPPORT OF APPEAL

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1. The Commissioner erred in not allowing the deduction of \$4,200.00 paid under the above-mentioned deed of covenant from the taxable income of the Appellant.

2. The Service is a charitable institution or endowment of a public character.

3. The taxable income of the Appellant amounting to \$4,200.00 has been transferred, assigned or otherwise disposed of for a period exceeding 2 years for the benefit of a charitable institution or endowment of a public character by virtue of the aforesaid Deed of Covenant within the true intent and meaning of subsection (3) of section 53 of the Income Tax Ordinance, Chapter 299 for the benefit of a charitable institution or endowment of a public character, to wit the Service. At the hearing Mr. G.M. Farnum of Messrs. Cameron & Shepherd before addressing the Board, laid over the following type-script extracts:-

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INCOME TAX ACT, 1918 - Section 37(B)

"Exemption shall be granted

(a)

(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 character, "decree, deed

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of trust or will," are applicable to charitable purposes only, and so far as the same are applied to charitable purposes only."

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FINANCE ACT 1921. Section 30(i)(a) and 30(i)(c) and (3)

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10 "(1) Exemption shall be granted

(a) from Income Tax under Schedule A, in respect of lands, tenements, hereditaments and heritages owned and occupied by a charity

(b)

Substi- (c) from income tax under Schedule D, in
tuted by respect of the profits of a trade
20 Section carried on by any charity, if the profits
24 of the are applied solely to the purposes of
Finance the charity and either:-
Act, (i) the trade is exercised in the course
1927 (ii) the work in connection with the
trade is mainly carried out by
beneficiaries of the charity-

(i) the trade is exercised in the course of the actual carrying out of the primary purpose of the charity; or

(ii) the work in connection with the trade is mainly carried out by beneficiaries of the charity-

30 (2)

(3) In this section the expression charity means anybody of persons or trust established for charitable purposes only.

40 Mr. Farrum admitted that the question to be resolved is whether the C.A.A. Service is a charitable institution within the meaning of section 53 of the Income Tax Ordinance. He then suggested that if the information furnished by the Directors of the C.A.A. Service as represented in Exhibit "A(i)" is admitted as factual he would not waste time by retracing the details contained therein, and Mr. Da Silva would only give such evidence as may be required in amplification.

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- (i) that the pertinent legislation in British Guiana is not as in the U.K. and
- (ii) assuming that the exemption qualification under the law in B.G. is as in the U.K., namely that the income surrendered is devoted solely to charitable purposes, then the C.A.A. Service in the legal sense satisfied this requirement.

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With regard to contention (i) Mr. Farnum stated that the relevant English legislation are:-

The Income Tax Act 1842

The Income Tax Act, 1918 - Section 37(b)

Finance Act, 1921, Section 30(i)(c) and (3).

The English Authorities are based either upon the Income Tax Act, 1842 or upon Finance Act, 1918 or 1921. He submitted that the words "Charitable purposes only" and "solely to the purposes of charity" appearing in the Acts cited connote limitation of the scope of the charity in order to qualify for exemption from income tax. Mr. Farnum then drew attention to the verbiage of Section 53(3) Chapter 299 stressing that while the section provides for exemption from tax when the other qualifying conditions have been fulfilled the income transferred must be applied "for the benefit of any ecclesiastical, charitable or educational institution, organisation or endowment of a public character". This comparison, Mr. Farnum said demonstrates that the exemption qualification under the English Legislation is more rigid than under the local legislation. He submitted that the local Ordinance being wider in scope than under the English Acts, the C.A.A. Service had satisfied the conditions to qualify the Appellant for the exemption claimed. He then cited the case of Rex v ex parte Rank - 8 tax Cases - page 286. Mr. Farnum stated that the decision in that case was based upon the provisions of the Income Tax Act of 1842. At page 290 Justice Mr. Cardie therein said that the case may be treated under the provisions of

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Section 37 of the 1918 Act. In reply to a question Mr. Farnum stated that the case failed because of the limitation imposed by the words "charitable purposes only" in the relevant section of the Act.

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10 Mr. Farnum further stated that all decisions are based on the ruling by the Master of the Rolls on page 291. He again stressed that the local legislation was not on par with the English Statutes. Accordingly all that is necessary under the local Income Tax Ordinance is for the trust involved to have in the coin the element of charity. By the same argument he expressed the opinion that a profit earning concern would not qualify the donor to exemption.

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20 With regard to the case of C.I.R. v City of Glasgow Police Athletic Association 34 T.C. (1953) cited by the Commissioner of Inland Revenue Mr. Farnum observed that at page 103 Lord Reid stated that the Act required that the qualifying trust must be for charitable purposes only. This he submits, merely emphasises how much wider or liberal is the local legislation. Continuing Mr. Farnum stated that by virtue of Section 8 of the Civil Law of B.G. Chapter 299 the expression should have the same meaning as in England. Accordingly the word "charitable" should be as defined in the preamble to the Mortmain Act of 1888 at Section 13. Mr. Farnum contended that the preamble does not attempt set out a complete list of charities. Those specified are merely examples. He further stated that nowhere in the Act is there anything that can be used to support an argument against the provisions of the local Ordinance if applied to the charity in question.

40 With regard to his second contention, if within the meaning of the U.K. Legislation the purpose of the English counterpart is "solely charitable" within the meaning of the English Act, it should be apparent that the officer responsible for advising the Commissioner fell into an error when he construed the expression "charity" in its popular sense rather than in its legal sense. He maintained the test is that the benefit conferred in its legal sense, must be open to both rich and poor alike in the Community and not restricted to charity of the nature as of almsgiving.

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Mr. Farnum then cited the cases of C.I.R. v Pemsel 1890 - T.C. p. 53 and referred to the legal definition of "charity" as laid down by Lord Macnaghten at page 96 which reads as follows:-

"Charity in its legal sense comprises four principal divisions: trusts for the relief of poverty, trusts for the advancement of education, trusts for the advancement of religion, and trust for other purposes beneficial to the community not falling under any of the preceding heads" 10

Cited also were:-

"(a) The cases of Grey, 1925, Chancery Division - page 362-366 which related to a gift of £300 to form the nucleus of a Regimental fund for the promotion of sport. A bequest of £200 to the Fund was regarded as conferring a public benefit; 20

(b) In re Good - 1905 2 Chancery - page 62."

Mr. Farnum was of the opinion that in these two cases the principle approved rather supports the case of the Appellant for exemption from income tax.

Mr. Farnum concluded his address by referring to the judgments of Lord Norman in C.I.R. v. City of Glasgow 1953 - 34 T.C. at page 76 and Lord Cohen in the Oxford Group v C.I.R. (1949) - 31 T.C. at page 221 which the Commissioner cited at (VII) & (VIII) of his reasons in support of the assessment. These pronouncements he maintained in their context support his contention because the object to which the trust in question are devoted under the Constitution of the C.A.A. Service are exclusively charitable, being in accord with the fourth division of Lord Macnaghten's definition of "Charity". 30

Mr. Gangadin briefly outlined the facts leading up to the re-organization of the constitution of the C.A.A. Service. He drew attention to the fact that it was not until 14th March, 1962 that Messrs. Thorne and Da Silva, Honorary 40

10 Directors of the Service sought recognition of the C.A.A. Service being accorded the status of a charitable organisation within the meaning of Section 53 of the Income Tax Ordinance. Reference then was made to the consequential developments (set out earlier herein) ending with the interview when Messrs. Da Silva and Thorne were told and later confirmed that due recognition would be accorded the C.A.A. Service if the constitution was made to conform with that of the National Citizens Advice Bureau of the U.K. Mr. Gangadin stressed that the Commissioner himself had to write the U.K. Bureau to obtain a copy of its constitution as the local Service could not furnish one when asked to. This showed plainly that the local Service was not aware of the constitution on which it claimed to have been patterned.

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20 The following is a digest of the submissions made by Mr. Gangadin:-

- 30 (i) that the law which applies to "charities" in British Guiana is English Law. By Section 8 of Chapter 2 of the Civil Law of British Guiana "charities" is understood to be "charities" within the meaning, purview and interpretation of the preamble to the Act of the 43rd Year of Queen Elizabeth, Cap. 4 as preserved by Section 13 of the Mortmain and Charitable Uses of Act, 1888. "Charities" in British Guiana must therefore satisfy the same conditions as organisations which are regarded as "charities" by English Law;
- (ii) that by English Law a charity in the legal sense comprises four principal divisions as outlined by Lord Macnaghten in *C.I.R. v Pemsel*, 3 T.C. 53 i.e.
- 40 (1) trusts for the relief of poverty;
- (2) trusts for the advancement of education;
- (3) trusts for the advancement of religion, and

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- (4) trusts for other purposes beneficial to the community not falling under any of the preceding heads;
- (iii) that in fact the Citizens' Advice and Aid Service to be a charity must fall within the meaning of Lord Macnaghten's fourth classification since it is not established for relief of poverty or for the advancement of religion or of education; 10
- (iv) that under the fourth classification an organisation could not be a charitable one, if consistently with its terms it is capable of doing something exclusively which is not charitable, notwithstanding that consistently with its terms it is capable of doing other things which are exclusively charitable vide Blair v. Duncan (1902) A.C. 37 and Re Sutton Stone v. Attorney General, 1885 Ch.D. 28, Ch.D. 464; 20
- (v) that an organisation could yet be charitable, however, although there are elements in its constitution which are strictly not charitable but this is possible only if the non-charitable elements are merely incidental to the main purposes of the organisation. If however a non-charitable object is itself one of the purposes of the organisation and it is not merely incidental to the purposes the organisation is not a charity within the meaning of Section 53 of the Income Tax Ordinance Cap. 299. Reference was made to the words of Lord Cohen in his reference to the cases of Royal College of Surgeons of England v National Provincial Bank and Oxford Group v Inland Revenue Commissioners at page 105 of 34 T.C. i.e. in C.I.R. v City of Glasgow Police Athletic Association; 30 40
- (vi) that by Section 53 of the Income Tax Ordinance, Chapter 299 a person is not subject to be taxed on such part of his income as is transferred by deed for a period exceeding two years for the benefit

of any ecclesiastical, educational or charitable institution, organisation or endowment of a public character since the amount so transferred is deemed to be the income of the transferee for the purpose of income tax;

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10 (vii) that the meaning of a charitable institution, organisation or endowment of a public character as stated in Section 53 of Chapter 299 could not include an organisation which is strictly not charitable - because "charitable organisation" can only mean an organisation which is charitable in the legal sense no more or no less; it follows therefore that an organisation cannot in law be a charitable organisation if its objects include purposes which can be construed as non-charitable and which in fact are not merely incidental to the purposes which are strictly charitable;

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(viii) that at page 182 of Wharton's Law Lexicon, fourteenth edition, the following words appear to show the meaning of "Charities"

30 "In general the question whether a gift is charitable depends not on whether it may, but whether it must be applied to purposes strictly charitable; see *Morice v Bishop of Durham* (1904) 9 399, 406"

40 (ix) that the Citizens' Advice and Aid Service is not a charitable institution, organisation or endowment of a public character within the meaning of Section 53 of the Income Tax Ordinance, Chapter 299 because its objects include purposes which are not charitable and which in fact are not merely incidental to the charitable purposes included in its objects;

(x) that the wording and meaning of the following objects of the organisation are too wide and uncertain to be brought

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within the meaning of charitable purposes;

- (a) "in general do anything to assist the citizen, whether financially or otherwise and in any way as may be determined by the central committee"
- (b) "in general to advise the citizen in the many complexities which may beset him;"
- (c) "helping the citizens to benefit from and to use wisely services provided by the State;"

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and the following object is clearly not charitable:-

- (d) "running a saving bank"
- (xi) that Mr. Farnum referred to Section 37(b) of the Income Tax Act, 1918 Sections 30(1)(a) and 30(1)(c) and 30(3) of the Finance Act, 1921 to show that the wording of the Acts referred to bodies which are established for charitable purposes only - emphasising "only" in other words he submitted that the English decisions on income tax matters pertaining to charity are based on the wording Acts, i.e. "for charitable purposes only". By implication Mr. Farnum is saying that there are two meanings to "charity" - one a "general legal" meaning, and the other "an income tax legal" meaning - that there can be organisations which by English Law are charities but which cannot fall within the income tax meaning of charity since they may not have been established for charitable purposes only. Mr. Gangadin submitted that this is not the case, that in fact, the Acts to which Mr. Farnum referred do not pretend to give a definition of "charity" for income tax purposes, but merely provide for the exemption from income tax of the income of those organisations which are established for charitable purposes only. The decisions to which reference

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was made in fact do attempt to explain the legal meaning of charity in terms of English Law generally and not specifically for income tax purposes only. In the present case the question to be decided is not whether the income of the Citizens' Advice and Aid Service should be exempt from income tax but whether the Appellant's contribution by deed should be taxed in his name by virtue of the fact that it was not made to a charitable organisation;

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- (xii) that while Mr. Farnum has cited cases to show that contributions made to public and benevolent organisations have been held to be charitable - not all public and benevolent organisations are charitable. There are organisations which are public and benevolent but which are yet not charitable. This contention is supported by the following cases: (See Nathan's Equity through the cases - 3rd Edition - 233)

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James v. Allen (1817) 3 Mer. 17
Harris v. Du Pasquier (1872) 26
L.T. 689
Re Hewitt (1883) 53 L.J. Ch. 132
Re Hades (1920) 2 Ch. 353.

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- (xiii) that Mr. Farnum has not submitted any authority to show where an organisation with objects the same as those of the Citizens' Advice and Aid Service has been held to be a charitable organisation in law.

Mr. Farnum replying stated that he can clearly recognise that public or benevolent objects are not necessarily charitable objects. He, however, still adhered to the grounds on which he argued the appeal viz:-

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- (i) that in this Colony, it is sufficiently to secure tax exemption if the objects to which the endowment is applied are substantially charitable whereas, in England, the objects must be solely charitable;

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(ii) that even in the U.K. the inclusion of an inconsiderable object would not militate against acceptance of the main purpose of the charity concerned.

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Mr. Farnum concluded by citing as an example the National Anti-Vivisection Society v. C.I.R. where the main purpose of the Society was the compulsory abolition of vivisection by Act of Parliament - 28 T.C. p. 354.

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(Contd.)

In spite of much deliberation the Board has been unable to reach a majority decision. Two members of the Board, Messrs. Heald and King share the Appellant's view that the decision of the courts (which incidentally were not always unanimous) are based on the verbiage of the English Acts, namely Income Tax Act, 1918 - Section 37(b) and the Finance Act, 1921 - Section 30(1)(a) and (1)(c) and 30(3). In their opinion Section 53(3) of the Income Tax Ordinance, Chapter 299 is so worded that the offending objects in the constitution of the C.A.A. Organisation at (x) of Mr. Gangadin's submissions could be regarded as conducive to the attainment of the purpose for which the Trust was established. In this connection attention is invited to the Charitable Trust Act, 1954, which, though only incidentally relevant to income tax, provides for the validation and modification of "imperfect trust provisions". An "imperfect trust provision" is defined as "any provision declaring the objects for which property is to be held or applied, and so describing these objects that consistently with the terms of the provision the property could be used exclusively for charitable purposes, but could nevertheless be used for purposes which are not charitable" - for example for charitable or benevolent purposes.

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The Chairman and Mr. Kranenburg, on the other hand, feel that the wording of Section 53(3) which incidentally is not peculiar to British Guiana, was adopted to simplify construction by bringing the provision broadly in conformity with the "Macnaghten" definition referred to earlier herein. Notwithstanding this refinement we find that the courts have been resorted to frequently especially in regard to claims held to be within the spirit and intendment of the division "endowment of a public character". This division corresponds with the

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fourth division of the Macnaghten definition, namely, "trusts for other purposes beneficial to the community not falling under any of the preceding heads". From a survey of some of these cases both Kranenburg and I conclude that in every instance the qualifying criterion is that the charity concerned must be exclusively of a public character.

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10 In the case of the Oxford Group v C.I.R.
(1949) 31 T.C. 221, 247, it was laid down that
any object which may be dual in character, in
that it can both be ancillary to and yet independ-
20 ent of the other objects would have the effect
of vitiating the primary object of the charity.

The following extract from Gunns Australia
Income Tax, Law and Practice sixth edition, page
880 regarding deductible gifts under section
20 78(1)(a) of the Australia Income Tax Act is
considered germane to the issue:-

"Although benevolence covers a wider field
than charity, it is doubted whether any
institution could be called a "public
benevolent institution" unless it had the
feature ascribed by Fitzgibbon, L.J., to
a legal charity. His words, quoted by
Lord Ashmore in I.R. Coars v Falkirk
30 Temperance Cafe Trust (1926) 11 T.C. at
p. 370, were: 'The essential attributes of
legal charity are, in my opinion, that it
shall be unselfish - that is, for the
benefit of other persons than the donor;
that it shall be public - that is, that
those to be benefited shall form a class
worthy, in numbers or importance, of
consideration as a public object of
generosity; and that it shall be philan-
40 thropic or benevolent - that is, dictated
by a desire to do good (Webb v Oldfield,
(1898) 1 I.B. 431)'."

In the circumstances the Board can make no
positive decision and consequently would give
no direction regarding the disposal of the
appeal deposit of \$5.00.

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I certify that the above to be a true
representation of the outcome of the deliberations
of the Board in this matter.

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Sgd. E. Mortimer Duke

Chairman
Income Tax Board of Review.

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EXHIBIT "I(i)"

LETTER, THE CITIZENS' ADVICE AND AID
SERVICE TO INLAND REVENUE

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"I(i)"
Letter,
The Citizens'
Advice and Aid
Service to
Inland Revenue,
14th March,
1962.

THE CITIZENS' ADVICE AND AID SERVICE

35, High Street,
Georgetown,
British Guiana

14th March, 1962.

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The Commissioner of Inland Revenue,
c/o General Post Office.

Sir,

Approval of the Citizens'
Advice and Aid Service as
a Charitable Organisation:

20 This Service would be most grateful if you could see your way to approve it as a charitable organisation under Section 53(3) of the Income Tax Ordinance Chapter 299 of the Laws in the following circumstances.

2. The Service, which is a non-political organisation, was established in May 1961, patterned on the United Kingdom Citizens' Advice Bureaux Service, 26, Bedford Square, London, W.C.1.

30 A copy of the Constitution of our Service and a copy of a pamphlet named "Aims, Methods and Procedure" of it are enclosed for your information. The Services rendered to any and every citizen who consults us are free of charge: any small loans which may be made to persons, who are eligible for such in accordance with the Rules, are free of interest: no charges whatever are made to anyone by the Service and no proceedings are instituted against any defaulters.

40 3. The Service is controlled, managed and operated by a Central Committee comprising

In the Supreme Court of Guyana

"I(i)"
Letter,
The Citizens' Advice and Aid Service to Inland Revenue,
14th March, 1962.
(Contd.)

representatives of bodies over a very wide field in British Guiana. I invite your attention to Clause 8 of the Constitution which empowers Honorary Directors to manage the Service. The three Honorary Directors are Mr. A. Singh M.B.E. (retired Deputy Registrar of Deeds), Mr. A.H. Thorne (retired Editor of the Guiana Graphic) and Mr. C.H. Da Silva (retired Deputy Financial Secretary). Mr. Thorne and Mr. Da Silva are at present engaged in the active day-to-day management of the Service on a fully honorary basis, i.e. they receive neither salary nor subsistence nor travelling allowance. The remainder of the staff of the Central Office consisting of a Secretary, Steno-typist and Messenger are paid employees of the Service.

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4. At the time the Service was established in 1961, we appealed to the commercial and industrial community, legal firms, and to many persons to assist in the establishment of the Service by way of Deeds of Covenant. A copy of the printed circular issued then is attached for your information. We intend to approach the Central Government, Municipalities and Local Authorities for grants - as is done in the United Kingdom in the near future. The response by Deeds of Covenant here has been sufficient to establish a Central Office only. When it grows as is expected, branch offices will be established in New Amsterdam, on the Corentyne Coast, at Buxton, Mackenzie, West Coast Demerara, Bartica, in the Essequibo and North West Districts and at Lethem, Rupununi.

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30

5. The Service has already made arrangements for services to be rendered by a panel of opticians, a panel of lawyers, and with the Religious denominations for representatives to deal with Citizens' matrimonial and domestic difficulties. We are now arranging for a panel of medical practitioners, and a dental panel. We are preparing for a scheme of Legal Aid and Advice patterned on the United Kingdom Acts of 1949, and 1950 to 1955; on this we shall be consulting the Bar Association and the Law Society of British Guiana.

40

6. The great need for an organisation such as the Service in this country was demonstrated in 1961 when over 1,500 citizens' availed themselves

of advice and guidance from the Service. This was done through interviews and by letter on every manner of human problems.

In the Supreme Court of Guyana

7. The present position regarding the affiliation of the British Guiana Service to the United Kingdom National Citizens' and Advice Bureau Committee is that that Committee has nothing in its Constitution which makes such affiliation possible. The Committee is considering the position and hopes to work out some way in which both the British Guiana Service and the Southern Rhodesia (which has made a similar application) can be affiliated.

"I(i)"
Letter, The Citizens' Advice and Aid Service to Inland Revenue, 14th March, 1962.
(Contd.)

8. The two Honorary Directors, Mr. Thorne and Mr. Da Silva will hold themselves available to furnish any further information or details you might require in considering this application. We would welcome a visit by you or one of your officers to our modest Office premises, now at 195, Camp Street, South Cummingsburg. Without approval as a charitable organisation for income tax purposes for which we are applying, we very much doubt that the Service could be maintained, much less expanded in the way we propose, and the need for which grows daily.

Yours faithfully,

Sgd. A.H. Thorne
Honorary Director.

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Honorary Director.

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30

In the Supreme
Court of
Guyana

EXHIBIT "I(ii)"

CONSTITUTION OF THE CITIZENS'
ADVICE AND AID SERVICE

"I(ii)"
Constitution
of The
Citizens'
Advice and Aid
Service.

CONSTITUTION

of

THE CITIZENS' ADVICE AND AID SERVICE

10

NAME AND ESTABLISHMENT OF THE CITIZENS'
ADVICE AND AID SERVICE

1. The name of the organisation hereby established is "The Citizens' Advice and Aid Service" (hereinafter referred to as the Service).

GENERAL AIMS, FUNCTIONS AND OBJECTS OF
THE SERVICE

2. The aims, functions and objects of the Service are:-

20

- (a) To provide advice, aid and services on or relating to medical, dental, optical, health, legal, matrimonial, domestic or other social matters;
- (b) To establish and operate a fund for the assistance of those in need on such terms and conditions as the Central Committee may determine;
- (c) To encourage thrift and provide savings facilities;
- (d) To make available to the individual in confidence accurate information and skilled advice on personal problems of daily life;
- (e) To establish, organise, sponsor or otherwise promote Adult Education and technical training of every kind including the explanation of legislation and Government notices and publications;

30

- (f) To help the citizen to benefit from and to use wisely the services provided for him by the State;
- (g) In general to advise the citizen in the many complexities which may beset him, and
- (h) Generally to do anything to assist the citizen, whether financial or otherwise who makes enquiry of the Service and in any way as may be determined by the Central Committee.

In the Supreme
Court of
Guyana

"I(ii)"
Constitution
of The
Citizens'
Advice and Aid
Service.
(Contd.)

In the Supreme
Court of
Guyana

EXHIBIT "J"

MEMORANDUM, SOLICITOR GENERAL TO
COMMISSIONER OF INLAND REVENUE

"J"

Memorandum,
Solicitor
General to
Commissioner
of Inland
Revenue,
19th April,
1962.

From: Solicitor General
To: Commissioner of Inland
Revenue (Thru'
Secretary to the
Treasury)

10

19th April, 1962.

L-166 The Citizens' Advice and Aid Service.

I have to refer to your memorandum No. E/105D of the 28th March, 1962 and enclosures therewith on the above subject and have to inform you that I am of the opinion that the objects of the Citizens' Advice and Aid Service are not wholly charitable. As a result the organisation would not qualify to be ranked as such for the purposes of section 53 of the Income Tax Ordinance.

20

Sgd. K. George
for Solicitor General.

EXHIBIT "K"

LETTER, INLAND REVENUE TO CITIZENS'
ADVICE AND AID SERVICE

In the Supreme
Court of
Guyana

"K"

Letter,
Inland Revenue
to Citizens'
Advice and Aid
Service,
2nd May, 1962.

INLAND REVENUE DEPARTMENT,
Income Tax Division,
P.O. Box 24,
Georgetown 9,
Demerara.
BRITISH GUIANA

10

23/EH

E/105D

2nd May, 1962
FREEDOM YEAR

Gentlemen,

Citizens' Advice and Aid Service

Receipt of your letter dated 14th March, 1962
is hereby acknowledged.

20

2. Kindly note that I have been advised by the
Law Officers that the abovenamed organisation is
not a charitable or educational organisation
within the meaning of Section 53 of the Income Tax
Ordinance and as such contributions made to it by
members of the public are not proper deductions
for income tax purposes.

I have the honour to be,
Gentlemen,
Your obedient Servant,

Sgd. W.G. Stoll

30

Commissioner of Inland Revenue.

The Hony. Directors,
The Citizens' Advice and Aid Service,
195 Camp Street,
Georgetown.

In the Supreme
Court of
Guyana

EXHIBIT "L"

LETTER, CITIZENS' ADVICE AND AID
SERVICE TO INLAND REVENUE

"L"
Letter,
Citizens'
Advice and Aid
Service to
Inland
Revenue,
26th May,
1962.

THE CITIZENS' ADVICE AND AID SERVICE

195 Camp Street,
Georgetown,
British Guiana.

10

26th May, 1962.

The Commissioner of Inland Revenue,
General Post Office,
Georgetown.

Sir,

Citizens' Advice & Aid Service

Thank you for your E/105^D of 2nd May, 1962.
We note the Law Officers' View that this organisa-
tion is not a charitable or educational organisa-
tion within the meaning of Section 53 of the
Income Tax Ordinance. We are, of course, unaware
of the particular legal meaning attributed to the
word "charitable" in the ordinance and had assigned
to it the general meaning of an organisation that
helps and assist any and all citizens without
charge. This is one of the points we had intended
to explain and amplify to you verbally had the
invitation to visit this Office contained in
paragraph 8 of our letter of 14th March, 1962,
been accepted.

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30

2. It is the case that we had sought guidance
on the point from the National Citizens' Advice
Bureaux Committee in the United Kingdom where
the Bureaux are accepted as "charitable organisa-
tions" by both the Inland Revenue and the Charity
Commissioners. To spell this all out in our own
local Constitution, copies of which we have
already sent to you, the following new clauses
have been included therein.

40

PURPOSES OF THE SERVICE

In the Supreme
Court
of Guyana

2A (a) The Service is established for charitable purposes only.

(b) In particular the Service is established to promote any charitable purposes for the benefit of the community in British Guiana (hereinafter called the "area of benefit") by the advancement of education, the furtherance of health and the relief of poverty, distress and sickness.

"L"
Letter,
Citizens'
Advice and Aid
Service to
Inland Revenue,
26th May, 1962.
(Contd.)

(c) In furtherance of the purposes hereinbefore defined, but not further or otherwise, the Service may:-

(i) Provide centres for the supply of advice and guidance.

(ii) Obtain, collect and receive money and funds by way of contributions, donations, legacies, grants and any other lawful method, and accept and receive gifts of property of any description (whether subject to any special trusts or not).

(iii) Procure to be written and print, publish, issue and circulate gratuitously or otherwise any reports or periodicals, books, pamphlets, leaflets or other documents.

(iv) Arrange and provide for or join in arranging and providing for the holding of exhibitions, meetings, lectures and classes.

(v) Promote, encourage or undertake organised research and experimental work.

(vi) Affiliate or become affiliated to any charitable body having charitable purposes or a charitable

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In the Supreme
Court of
Guyana

"L"
Letter, ...
Citizens'
Advice and Aid
Service to
Inland
Revenue,
26th May,
1962.
(Contd.)

purpose only as its objects or
object and acquire and undertake
all or any part of the assets,
liabilities and engagements of any
such body which the Service may
lawfully acquire."

New Clause 10A "ENDOWMENTS"

10A The Central Committee may obtain, collect
and receive donations or endowments and shall
apply them as and when they think fit for the
general purpose of the service."

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New Clause 16 "DISSOLUTION"

16 The Service may at any time be dissolved
by a Resolution passed by a two-thirds
majority of those present and voting at a
special General Meeting convened for the
purpose of which not less than 21 days' notice
shall have been given to all members of the
Committee and duly published in the area of
benefit. The property and assets of the
Service shall not be paid to or distributed
among the members of the Committee but shall
be applied to such other charitable purposes
in the area of benefit or for such other
charitable purposes in furtherance of Citizens'
Advice and Aid Service work as the Central
Committee with the agreement of the Inland
Revenue Department may determine."

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30

3. These inclusions in the Constitution merely
enshrined the original intentions when the Service
was established in May, 1961, and do not involve
any change in principle in the policies of the
Service. Their formal inclusions in the Constitu-
tion awaited the receipt of model provisions from
the United Kingdom.

4. Besides these provisions, the Service is
advised that the United Kingdom Inland Revenue
have for many years recognised that contributions
from commercial, industrial and professional firms
to Citizens' Advice Bureaux are justifiable
business expenses i.e. the Inland Revenue regard
them as being in the same class as money spent on
providing a welfare service within an industry
and thus exempt from tax.

40

5. In our letter of 14th May, we fully explained the importance of acceptance by you as a "charitable" organisation for income tax exemption of the Service. Should you need any further information we would be only too glad to furnish it and of course, we would willingly be guided by you should any further technicalities still remain in the way of your acceptance of the Service as a "charitable" organisation for which we had applied in our previous letter.

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Yours faithfully,

Sgd. C.H. Thorne,
Hon. Director

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Hon. Director

In the Supreme
Court of
Guyana

"L"
Letter,
Citizens'
Advice and Aid
Service to
Inland Revenue,
26th May,
1962.
(Contd.)

In the Supreme
Court of
Guyana

EXHIBIT "M"

LETTER, INLAND REVENUE TO CITIZENS'
ADVICE AND AID SERVICE

"M"
Letter,
Inland Revenue
to Citizens'
Advice and Aid
Service,
31st May,
1962.

23/CM

E/105^D

Inland Revenue Department,
Income Tax Division,
P.O. Box 24,
Georgetown,
BRITISH GUIANA.

10

31st May, 1962
FREEDOM YEAR

Gentlemen,

The Citizens' Advice and Aid Service

Receipt of your dated 26th May, 1962 is hereby
acknowledged.

2. In order that I may be able to reconsider the
question as to whether the abovenamed organisation
is a charitable organisation within the meaning of
Section 53 of the Income Tax Ordinance, Chapter
299, I should be obliged to have the following for
my perusal:-

20

- (i) Amended copy of the Constitution of the
Organisation;
- (ii) amended copy of the "Aims, Methods and
Procedure" of the organisation;
- (iii) copy of the "Trust Deed" if any, of the
organisation;
- (iv) copy of the Minutes or Report of the
inaugural meeting of the organisation.

30

3. You mentioned that the "National Citizens'
Advice Bureaux" of the United Kingdom are accepted
as charitable organisations by both the Inland
Revenue and the Charity Commissioners of the
United Kingdom. I should be grateful if you
would let me have a copy, if available, of the

Constitution Aims and Objects of the "National Citizens' Advice Bureaux" or the address of their head office in England.

In the Supreme Court of Guyana

I have the honour to be,
Gentlemen,
Your obedient servant,

Sgd. W.G. Stoll

Commissioner of Inland Revenue.

"M"
Letter,
Inland Revenue
to Citizens'
Advice and Aid
Service,
31st May,
1962.
(Contd.)

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The Hony. Directors,
The Citizens' Advice and Aid
Service,
195, Camp Street,
Georgetown.

In the Supreme
Court of
Guyana

EXHIBIT "N(i)"

LETTER, CITIZENS' ADVICE AND AID
SERVICE TO INLAND REVENUE

"N(i)"

Letter,
Citizens' Advice
and Aid Service
to Inland
Revenue,
29th July,
1962.

THE CITIZENS' ADVICE AND AID SERVICE

Central Office:
35, High Street,
Georgetown,
British Guiana.

10

29th July, 1962.

The Commissioner of Inland Revenue,
General Post Office,
Georgetown.

Dear Sir,

The Citizens' Advice and Aid Service

Your reference E/105D of 31st May, 1962 refers:
an answer to your question was held up pending the
Annual General Meeting of the Service which was
held on Thursday, 19th July, 1962.

20

2. As requested, I enclose -

- (1) Six copies of the amendments to the Constitution (the original Constitution has already been furnished);
- (2) There is no need for amendment to the pamphlet "Aims, Methods and Procedure" since this does not relate to the financing of the Service;
- (3) There is no "Trust Deed" since such is not considered necessary (unless you specifically wish one);
- (4) Certified copy of the Minutes of the Inaugural Meeting of the Service.

30

3. The address of the National Citizens' Advice Bureaux in the United Kingdom is:-

26 Bedford Square,
London, W.C.1.
U.K.

Yours faithfully,

*.....

Honorary Director

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Honorary Director

In the Supreme
Court of
Guyana

"N(i)"

Letter,
Citizens'
Advice and Aid
Service to
Inland Revenue,
29th July,
1962.

(Contd.)

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*Mr. A.H. Thorne is ill in hospital and unable to sign this letter.

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In the Supreme
Court of
Guyana

EXHIBIT "N(ii)"

MINUTES OF CITIZENS' ADVICE AND AID
SERVICE COMMITTEE MEETING

"N(ii)"
Minutes of
Citizens'
Advice and Aid
Service
Committee
Meeting,
28th May,
1961.

MINUTES of the Inaugural Meeting of the
Citizens' Advice and Aid Service
Committee held at the Central Office,
35, High Street, Georgetown, at 5 p.m.
on Tuesday, 28th May, 1961.

10

Attendance: Dr. B.B.G. Nehaul Deputy Chairman,
Mr. A. Singh, M.B.E., Mr. A.H. Thorne, Mr.
C.A. Da Silva, Honorary Directors, Mr.
R.C. Tello, Mr. J.B. Gonsalves, Mr. P.S.
D'Aguiar, Rev. J. Bobb, Miss V. Sweetnam,
Members of the Central Committee, His
Worship the Mayor Mr. Lionel Luckhoo,
Q.C. (now C.B.E.) and Mrs. Luckhoo and 23
guests were present.

20

Chairman's Address In the unavoidable absence
through illness of the Chairman, Mr. J.
Edward de Freitas C.B.E., Dr. Nehaul, Deputy
Chairman read the address.

Constitution The Central Committee approved
of the Constitution drafted by the Steering
Committee which had been printed and circu-
lated before the meeting, to members.

Mayor's Address His Worship the Mayor then
addressed the meeting and after a stirring
speech in which he declared that the
Service "is more than a charity
it will help people to help themselves."
The Mayoress, Mrs. Luckhoo cut the ribbon
across the door of the Office which was
declared open. The success of the Service
was then toasted and the meeting ended at
6.30 p.m.

30

J. Edward de Freitas
Chairman
19th July, 1962

40

Certified a correct copy of the minutes of the
Inaugural Meeting of the Citizens' Advice and
Aid Service Committee.

?
Honorary Director
30th July, 1961

EXHIBIT "N(iii)"

PROPOSED AMENDMENTS TO CONSTITUTION

In the Supreme
Court of
Guyana

PROPOSED AMENDMENTS TO CONSTITUTION

"N(iii)"
Proposed
Amendments to
Constitution.

New Clauses:

"PURPOSES OF THE SERVICE"

- 10 2A (a) The Service is established for charitable purposes only.
- (b) In particular the Service is established to promote any charitable purposes for the benefit of the community in British Guiana (hereinafter called the "area of benefit") by the advancement of education, the furtherance of health and the relief of poverty, distress and sickness.
- 20 (c) In furtherance of the purposes hereinbefore defined, but not further or otherwise, the Service may:-
- (i) Provide centres for the supply of advice and guidance.
- (ii) Obtain, collect and receive moneys and funds by way of contributions, donations, legacies, grants and any other lawful method, and accept and receive gifts of property of any description (whether subject to any special trusts or not).
- 30 (iii) Procure to be written and print, publish, issue and circulate gratuitously or otherwise any reports or periodicals, books, pamphlets, leaflets or other documents.
- (iv) Arrange and provide for or join in arranging and providing for the holding of exhibitions, meetings, lectures and classes.
- 40 (v) Promote, encourage or undertake organised research and experimental work.

In the Supreme
Court of
Guyana

"N(iii)"
Proposed
Amendments to
Constitution.
(Contd.)

- (vi) Affiliate or become affiliated to any charitable body having charitable purposes or a charitable purpose only as its objects or object and acquire and undertake all or any part of the assets, liabilities and engagements of any such body which the Service may lawfully acquire."

New Clause 10A

"ENDOWMENTS

10

10A The Central Committee may obtain, collect and receive donations or endowments and shall apply them as and when they think fit for the general purpose of the Service."

New Clause 16

"DISSOLUTION

20

16 The Service may at any time be dissolved by a Resolution passed by a two-thirds majority of those persons present and voting at a special General Meeting convened for the purpose of which not less than 21 days' notice shall have been given to all members of the Committee and duly published in the area of benefit. The property and assets of the Service shall not be paid to or distributed among the members of the Committee but shall be applied to such other charitable purposes in the area of benefit or for such other charitable purposes in furtherance of Citizens' Advice and Aid Service work as the Central Committee with the agreement of the Inland Revenue Department may determine."

EXHIBIT "O"

MODEL CONSTITUTION FOR A LOCAL
CITIZENS' ADVICE BUREAU

In the Supreme
Court of
Guyana

"O"

Model Consti-
tution for a
Local
Citizens'
Advice Bureau.

10 THE NATIONAL CITIZENS' ADVICE BUREAUX
COMMITTEE (in association with the
National Council of Social Service)
26 Bedford Square, London, W.C.1.

MODEL CONSTITUTION FOR A LOCAL
CITIZENS' ADVICE BUREAU

Clause 1: NAME

The name of the Bureau shall be the _____
Citizens' Advice Bureau (hereinafter
called "the Bureau").

Clause 2: PURPOSES:

- 20 (a) The Bureau is established for charitable
purposes only.
- (b) In particular the Bureau is established
to promote any charitable purposes for
the benefit of the community in the city
(borough etc.) of _____ (herein-
after called the "area of benefit") by
the advancement of education, the
furtherance of health and the relief of
poverty, distress and sickness.
- 30 (c) In furtherance of the purposes herein-
before defined, but not further or
otherwise, the Bureau may:-
- (i) Provide centres for the supply of
advice and guidance.
 - (ii) Obtain, collect and receive money
and funds by way of contributions,
donations, legacies, grants, and
any other lawful method, and accept
and receive gifts of property of
any description (whether subject to
any special trusts or not).

In the Supreme
Court of
Guyana

"O"
Model Consti-
tution for a
Local
Citizens'
Advice Bureau.
(Contd.)

- (iii) Procure to be written and print, publish, issue and circulate gratuitously or otherwise any reports of periodicals, books, pamphlets, leaflets or other documents.
- (iv) Arrange and provide for or join in arranging and providing for the holding of exhibitions, meetings, lectures and classes.
- (v) Promote, encourage or undertake organised research and experimental work.
- (vi) Affiliate or become affiliated to any charitable body having charitable purposes or a charitable purpose only as its objects or object and acquire and undertake all or any part of the assets, liabilities and engagements of any such body which the Bureau may lawfully acquire.

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20

Clause 3: THE COMMITTEE OF MANAGEMENT:

- (1) The Bureau shall be managed by a Committee of Management (hereinafter called "the Committee").
- (2) The first members of the Committee shall be:-
 - (a) The persons specified in the First Schedule.
 - (b) The representative members appointed by the statutory authorities and voluntary organisation indicated in the Second Schedule.

30

The persons specified in the First Schedule may from time to time re-appointed by the Committee.

- (3) Any statutory authority or voluntary organisation which is pursuing or interested in any of the said purposes (including those specified in the Second Schedule)

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may from time to time be invited by the Committee participate in the work of the Bureau and to appoint such number of representative members as the Committee may from time to time determine.

In the Supreme
Court of
Guyana

"O"

Model Consti-
tution for a
Local
Citizens'
Advice Bureau.
(Contd.)

- 10 (4) The Committee may from time to time invite the person holding any office to become an ex officio member of the Committee.
- (5) The Committee shall have power to co-opt persons having special knowledge or experience, provided that the number of co-opted members shall not exceed one-third of the total membership of the Committee. They shall hold office until the end of the Annual General Meeting following their co-option.
- 20 (6) Participating authorities and organisations may appoint deputies (without power to vote) to replace representative members who are unable to attend any particular meeting of the Committee.
- (7) The Committee may invite any person to attend its meetings as an observer but without power to vote.
- 30 (8) Except in the case of members appointed to fill casual vacancies, and members newly appointed under sub-clause (3) between Annual General Meetings (who shall hold office until the end of the Annual General Meeting following their appointment), the term of office of members of the Committee shall commence at the end of the Annual General Meeting next after their appointment and shall expire at the end of the Annual General Meeting in the following year.
- 40 (9) Any competent member of the Committee may be re-appointed or re-co-opted.
- (10) A casual vacancy in the office of representative member may be filled by the

In the Supreme
Court of
Guyana

proper appointing organisation. A member appointed to fill a casual vacancy shall hold office only for the unexpired term of office of the member in whose place he is appointed.

"0"

Model Consti-
tution for a
Local
Citizens'
Advice Bureau.
(Contd.)

Clause 4: SUB COMMITTEES:

The Committee may from time to time appoint such sub-committees as may be deemed necessary, and may determine their terms of reference powers, duration and composition, provided that no sub committee may be given power to co-opt more than one fourth of its total membership.

10

Clause 5: FAILURE TO APPOINT:

The proceedings of the Committee shall not be invalidated by any failure to appoint or any defect in the appointment or qualification of any member.

Clause 6: MEETINGS OF COMMITTEE:

The Committee shall hold at least three ordinary meetings in each year and may hold such other ordinary meetings as may be required. A special meeting may be summoned at any time by the Chairman or any two Members upon seven clear days' notice being given to all the other Members of the matters to be discussed.

20

Clause 7: HONORARY OFFICERS:

The Honorary Officers of the Bureau shall be a President, a Treasurer, a Legal Adviser, an Auditor and such other unpaid officers as the Committee may from time to time decide. The Committee shall fix their respective terms of office.

30

Clause 8: CHAIRMAN and VICE-CHAIRMAN:

The Committee shall elect one of their number to be Chairman of their meetings and may elect one of their number to be Vice-Chairman. If the Chairman is absent from any meeting, the Vice-Chairman (if any) shall preside; otherwise the Members present shall, before any other business is transacted, choose one of their number to preside at that meeting.

40

Clause 9: VOTING:

Every matter shall (except as in this Deed provided) be determined by the majority of the Members present and voting on the question. In the case of equality of votes the Chairman of the meeting shall have a second or casting vote.

In the Supreme Court of Guyana

"O"
Model Constitution for a Local Citizens' Advice Bureau.
(Contd.)

Clause 10: ANNUAL GENERAL MEETING:

10

(1) The first Annual General Meeting after the adoption of this Constitution shall be held in the month of (April) and shall be convened by the first members of the Committee. Subsequent Annual General Meetings shall be held in the month of (April) each year or as soon as practicable thereafter.

20

(2) All inhabitants of the area of benefit of (eighteen) years of age and upwards shall be entitled to attend the Annual General Meeting.

30

(3) Annual General Meetings shall be convened by the Committee. Public notice of every Annual General Meeting shall be given at least seven days before the date thereof by displaying a notice in some conspicuous part of the Bureau and shall be advertised in a newspaper circulating in that area.

40

(4) The Chairman shall be the President or the Chairman of the Committee. In their absence the Vice-Chairman (if any) shall take the chair, but if none is present, the persons present shall, before any other business is transacted, appoint a Chairman of the Meeting.

(5) The Committee shall present to each Annual General Meeting the report and accounts of the Bureau for the preceding year.

(6) Until the end of the first Annual General Meeting to be held after the adoption of this Constitution the Bureau shall be

In the Supreme
Court of
Guyana

administered by the first members of the
Committee.

"O"
Model Consti-
tution for a
Local
Citizens'
Advice Bureau.
(Contd.)

Clause 11: SPECIAL GENERAL MEETINGS:

The Committee may call Special General Meetings whenever they think fit and the provisions of Clause 10 shall apply mutatis mutandis but so that Clause 13 shall apply to a Special General Meeting convened for the purpose of dissolution.

10

Clause 12: ENDOWMENTS:

The Committee may obtain collect and receive donations or endowments and shall apply them as and when they think fit for the general purpose of the Bureau.

Clause 13: DISSOLUTION:

The Bureau may at any time be dissolved by a Resolution passed by a two-thirds majority of those present and voting at a Special General Meeting convened for the purpose of which not less than 21 days' notice shall have been given to all members of the Committee and duly published in the area of benefit. Clause 10 shall mutatis mutandis apply. The property and assets of the Bureau shall not be paid to or distributed among the members of the Committee but shall be applied to such other charitable purposes in the area of benefit or for such other charitable purposes in furtherance of the Citizens' Advice Bureaux work of the National Council of Social Service as that Council may with the approval of the Charity Commissioners or other authority having charitable jurisdiction determine.

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Clause 14: RULES AND REGULATIONS:

Within the limits prescribed by this constitution the Committee may from time to time make and alter rules and regulations for the conduct of their business and for the summoning and conduct of their meetings or of annual or special general meetings, the deposit of money at a proper bank, the custody of documents, and in particular with reference to:-

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- (a) the appointment as Secretary of one of themselves without remuneration or some

other person at such remuneration as the Committee may determine;

- (b) the engagement and dismissal of such paid officers and servants as the Committee may consider necessary; and
- (c) the number of Members who shall form a quorum at meetings of the Committee; provided that such quorum shall never be less than one-third of the total number of the Members for the time being.

In the Supreme Court of Guyana

"O"
Model Constitution for a Local Citizens' Advice Bureau.
(Contd.)

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Clause 15: ALTERATIONS TO THE CONSTITUTION:

Alterations to this Constitution must receive the assent of not less than two-thirds of the members of the Committee present and voting. A Resolution for the alteration of the Constitution must be received by the Secretary at least 21 clear days before the meeting at which the Resolution is to be brought forward. At least seven days' notice of such a meeting must be given by the Secretary to the members of the Committee and must include notice of the alteration proposed.

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PROVIDED THAT no alteration to clauses 2, 3, 13 shall take effect until the approval in writing of the Charity Commissioners or other authority having charitable jurisdiction shall have been obtained.

Clause 16: INTERPRETATION:

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The interpretation Act, 1889, applies for the interpretation of this Constitution as it applies for the interpretation of an Act of Parliament.

THE FIRST SCHEDULE

Example: Miss Annie Boleyn

Mr. John Doe

Miss Nell Gwynne

Mr. Richard Roe

In the Supreme
Court of
Guyana

THE SECOND SCHEDULE

<u>Example: Organisation</u>	<u>Representative Members</u>	
<p style="text-align: center;"><u>"O"</u></p> <p>Model Consti- tution for a Local Citizens' Advice Bureau. (Contd.)</p>	<p>The (Sevenoaks) Urban District Council</p> <p>The Committee of the (Sevenoaks) Towns-Women's Guild</p> <p>The Committee of the (Sevenoaks) Branch of The British Red Cross Society</p> <p>The (Sevenoaks) Old People's Welfare Committee</p> <p>The Committee of the (Sevenoaks) Branch of the British Legion, Men's Section</p> <p>The Committee of the (Sevenoaks) Branch of Toc H</p>	<p>Mr. A. Brown</p> <p>Mrs. B. Green</p> <p>Miss C. Black</p> <p>Mrs. D. White</p> <p>Major E. Rust</p> <p>Mr. F. Grey</p>
		<p>10</p> <p>20</p>

CAB/K/800?27-10.61.

EXHIBIT "P"

LETTER, CITIZENS' ADVICE AND AID SERVICE TO INLAND REVENUE

In the Supreme Court of Guyana

"P"

Letter, Citizens' Advice and Aid Service to Inland Revenue, 1st September, 1962.

THE CITIZENS' ADVICE AND AID SERVICE

Central Office,
195 Camp Street,
Georgetown,
British Guiana.

1st September, 1962.

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CENTRAL COMMITTEE

The Commissioner of Inland Revenue,
General Post Office,
Georgetown.

Dear Sir,

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The Citizens' Advice & Aid Service:

Your reference is E/106^D. We anxiously await your decision in the matter of acceptance of the Service as a charitable organisation. Our last letter to you carries the date 29th July, 1962.

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2. The benefactors of this Service have refused any further support unless the Inland Revenue Department accepts the Service as a charitable organisation within the meaning of the Ordinance. Without such support, the Service will soon have to close its doors.

3. I seek an interview with you at your earliest convenience to furnish any further information you may need. The Central Committee of the Service and we, the Honorary Directors categorically maintain that this Service is wholly a charitable organisation. We have already fully explained to you what is the position in the United Kingdom.

Yours faithfully,

- 1. C.H. Thorne Hon. Director
- 2. ? Hon. Director

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In the Supreme
Court of
Guyana

EXHIBIT "Q"

NOTES OF INTERVIEW

"Q"
Notes of
Interview,
8th September,
1962.

NOTES OF INTERVIEW

Callers:- Messrs. C. Da Silva and C. Thorne
of the Citizens' Advice and Aid
Service.

Taken by:- V.J. Gangadin - 8/9/62.

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Messrs. Da Silva and Thorne explained that the
Citizens' Advice and Aid Service was formed along
the same lines as the National Citizens' Advice
Bureau Committee of the United Kingdom: Mr. Da Silva
said that the latter organisation was recognised in
the U.K., as a charitable organisation by the
Inland Revenue Authorities and as such he thought
that the Citizens' Advice and Aid Service would be
given recognition here.

I said that it was my view that the "Citizens'
Aid" would be recognised by the Commissioner of
Inland Revenue provided that the constitution of
this body was the same as the National Citizens'
Advice Bureau of the U.K. In fact the "Citizens
Aid" must constitution was not the same and if the
organisation would adopt a new constitution con-
forming to that of the National Citizens Advice
Bureau the matter would be reconsidered.

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Mr. Thorne said that they would put the matter
up to the members for consideration and he felt
that the suggested new constitution would be
adopted in place of the existing one. Mr. Da Silva
said that the organisation was running out of funds
and unless the Commissioner of Inland Revenue gave
recognition, the organisation would have to be
dissolved shortly. I said the quicker the new
constitution was adopted the better was their
chance of obtaining recognition. I added that all
that I have said was subject to the C.I.R.'s approval.

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V.J. Gangadin.
8/9/62 D.C.I.R. (acting)

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C.I.R.

For your information please. Kindly refer to
a reply dated 28th August, 1962 from the U.K.
organisation.

V.J. Gangadin.
8/9/62

EXHIBIT "R"

LETTER, INLAND REVENUE TO CITIZENS'
ADVICE AND AID SERVICE

In the Supreme
Court of
Guyana

"R"

Letter,
Inland Revenue
to Citizens'
Advice and Aid
Service,
15th September,
1962.

INLAND REVENUE DEPARTMENT,
Income Tax Division,
P.O. Box 24,
Georgetown,
BRITISH GUIANA

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23/BHK

E/105^D

15th September, 1962
FREEDOM YEAR

Gentlemen,

Receipt of your letter dated 1st September,
1962 is hereby acknowledged.

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2. I wish to refer to the interview you had with
an officer of this department on the subject of
recognition of the "Citizens Advice and Aid Service"
as a charitable organisation for the purpose of the
Income Tax Ordinance. As you are aware, the Law
Officers expressed the opinion that the organisa-
tion under its existing constitution cannot be so
considered.

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3. As suggested by my officer at the interview,
if the model constitution of a local citizens'
advice bureau of the "National Citizens' Advice
Bureaux Committee" of England is adopted by the
"Citizens' Advice and Aid Service" in place of the
existing one, I am prepared to reconsider the
question of recognising your organisation as a
charitable body for income tax purposes.

4. I may add that so far as it appears to me the
model constitution referred to above seems to
provide purposes which are charitable only.

I have the honour to be,
Gentlemen,
Your obedient servant,

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Sgd. W.G. Stoll
Commissioner of Inland Revenue.

The Hon. Directors,
The Citizens' Advice & Aid Service.
195, Camp Street, Georgetown.

IN THE PRIVY COUNCIL

No. 19 of 1968

O N A P P E A L
FROM THE COURT OF APPEAL OF THE SUPREME
COURT OF JUDICATURE OF GUYANA

B E T W E E N :-

PETER STANISLAUS D'AGUIAR

(Appellant)
Appellant

- and -

THE COMMISSIONER OF INLAND REVENUE

(Respondent)
Respondent

R E C O R D O F P R O C E E D I N G S

Clifford-Turner & Co.,
11, Old Jewry,
London, E.C.2.

Solicitors for the Appellant

Charles Russell & Co.,
37, Norfolk Street,
London, W.C.2.

Solicitors for Respondent