

## Supreme Court, Equity Side.

THE ADVOCATE GENERAL *ex relatione* CHA'NDU'

RAGHUNA'TH *et al.* ..... *Plaintiffs.*

VISHVANA'TH A'TMA'RA'M ..... *Defendant.*

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June 12.

*Hindú Charities—Native Religious Institutions—Administration by the Courts of Native Religious Charities—Superstitious Uses—Advocate General.*

The English statute as to superstitious uses is not applicable to the Courts in India, and those Courts have jurisdiction to entertain suits for the establishment and administration of Native religious institutions.

A suit to administer the funds of a Hindú Charity is properly brought in the name of the Advocate General, who should, however, only exercise a general control over such suit, and not interfere in the minute details of the religious charity to be administered.

THE INFORMATION STATED that in 1823 a fund had been formed by subscription by the members of the Námdev Shimpi caste for defraying the expenses of the worship of Shrí Vithobá, and of maintaining a temple or pagoda already erected and appropriated to that purpose; that the caste had also another fund devoted to the expenses of the same worship, consisting of fees paid by the members of the caste upon marriage, adoption, and other occasions and ceremonies, and of certain funds made up of gifts and legacies, and of fines levied by the caste upon its members, and other sums ordered by the *pancháyat* to be deposited by the members of the caste for specific purposes, and of various other sums; that the caste had also a third fund not devoted to the worship of Shrí Vithobá, but to the expenses of feasts and ceremonies of the caste, and consisting partly of subscriptions by the members of the caste, and partly of fees paid by them on marriage, adoption, and other occasions, and of fines levied by the *pancháyat* on members who transgressed the rules of the caste, and partly of other sums; that the caste had intrusted the three funds to the management and collection of A'tmárám Báláji, who for many years, until his death in 1851, managed them to the satisfaction of the caste; but that on his death the funds, then amounting to nearly Rs. 70,000, fell into the hands of his son and executor, the defendant, Vishvanáth A'tmárám, who refused to account for the same; and that at a meeting of the caste held in February 1855 the relators were appointed to sue him.

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In England previously to the Toleration Acts the Court of Chancery would not carry out trusts for Protestant dissenters. Those Acts permitted them to exercise their religion, but did not direct the Court of Chancery to aid them in such trusts; yet ever since those Acts were passed, trusts for the religious purposes of such dissenters have been enforced by the court: Boyle on Charities 42; where many cases in which the Attorney General was plaintiff are cited. In *The Attorney General v. Fowler (g)*, *The Attorney General v. Cock (h)*, *The Attorney General v. Lord Dudley (i)*, and *The Attorney General v. Molland (j)*, the right of such persons to sue in the name of the Attorney General was recognised, and it is clearly established that the maintenance of a Protestant Dissenting Chapel is considered a charitable institution for this purpose. A bequest for the assistance of Unitarian congregations has also been held valid, and directed to be carried into execution: *Shrewsbury v. Hornby (k)*; and in *Shore v. The Attorney General (l)* the Judges all gave it as their opinion that Unitarians are capable of partaking of religious charities for their benefit: see opinion of Tindal, C.J., to that effect (p. 578), although in that particular case not within the scope of the charity. In *Strauss v. Goldsmid (m)*, a bequest to enable persons professing the Jewish religion to observe its rights was held by Shadwell, V.C., to be valid. *De Costa v. De Paz* was there cited, but that case is easily distinguished, because the trust there was not alone for the maintenance, but for the advancement of the Jewish religion, and, therefore, of an aggressive and propagatory character (see observations of Lord Eldon in *re the Bedford Charity (n)*).

Since the Roman Catholic Emancipation Act &c. Roman Catholic trusts have been carried out: *Bradshaw v. Tasker (o)*; and the Attorney General has been a party for the purpose: *The Attorney General v. Gladstone (p)*.

That the law against superstitious uses does not apply to Hindús &c. is shown by *Mullick v. Mullick (q)*, 2 Strange H. L., Addenda 19, and cases there cited as decided in

(g) 15 Vesey 85. (h) 2 Ves. Sen. 273, 276.  
 (i) Coop. 146. (j) Younge 562.

(k) 5 Hare 406. (l) 9 Cl. & F. 355. (m) 8 Sim. 614. (n) 2 Swans. 522.  
 (o) 2 M. & K. 221. (p) 13 Sim. 7. (q) 1 Knapp P.C. 245.

the Supreme Court at Calcutta, and cases in 1 Morley's Dig., Tit. "Religious Endowment," p. 550 (4), p. 551 (13, 14)."

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The anonymous case cited from East's Notes is not now sustainable. Many suits, both bills and informations, in respect of Hindú, Mussalmán, and Roman Catholic religious institutions, have been entertained by this Court: one *coram* Sir J. Mackintosh in 1809, affirmed afterwards by the Privy Council, as to the patronage, presentation, and superintendance of a Muhammadan *durgá* at Máhim; and see *The Advocate General v. DeMello*; *The Advocate General v. Hartmann*; *The Advocate General v. Dossa Laduck*.

The Advocate General here occupies the same position as the Attorney General in England, with variations suitable to the circumstances of the case and the practice of the court: *The Attorney General v. Brodie (r)*: Stat. 53 Geo. III., c. 155, s. 111; and represents the Crown. The duty of the Advocate General, as representing the King as *parens patriæ*, is clearly laid down as to charity cases in *The Corporation of Ludlow v. Greenhouse (s)*; and if the Attorney General at home may maintain informations on behalf of tolerated religions (and not the religion of the State merely), such as Dissenters, Roman Catholics, and Unitarians (which last body can scarcely be called Christians), how much more should the Advocate General here do so, where the British rulers have not imposed Christianity on the natives, and the Charter of the Court and the policy of Government point out, and anxiously prescribe, not only toleration, but that the Courts should recognise the laws, religions, and customs of Hindús and Muhammandans, and should secure to them the free exercise of the same.

If the Court were wilfully to shut its eyes to such a case as the present, and permit an individual to misappropriate the funds of the caste, and the funds devoted by the caste to religious purposes, it would leave the Hindú remediless against every such wrong-doer as the defendant. Anarchy and dangerous commotions amongst the religious communities in the island would be the consequence of the non-interference of the Court in such cases. The Courts of Justice antecedent to British rule have been supplanted by our Courts, but the laws, and the religion of the Hindús

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and Muhammadans so closely interwoven with their laws, remain the same. The code regarding their religious and caste charities continues; the machinery for their administration alone has been changed. To decline to entertain such suits would be tantamount to an abdication by this Court of its proper functions. The authorities already quoted show that the Supreme Courts do grant relief in such cases as this, and insist upon a proper application of funds devoted to charities and religious objects. If then the orthodoxy of the Court be not of that stringent and exclusive character as to prevent it from denying its assistance, what peculiar sanctity is there investing the office of Advocate General to prevent him from aiding the Courts in India, where Hindú or Muhammadan religious and charitable institutions are concerned, in the same manner as the coördinate functionary in England, the Attorney General, assists the Court of Chancery with reference to similar institutions belonging to Dissenters, Roman Catholics, and Unitarians? The analogy seems perfect, and it is a rational expectation to believe that the intervention of the Advocate General would in many instances of caste disputes as to charitable and religious endowments bring the facts of each case more fully and fairly before the Court, and in a more truthful form than they might otherwise ever reach it.

*Lowndes*, in reply:—The Court, if it upholds this information, will in fact maintain that the doctrines of the Hindú religion are to be propagated by a Christian court of justice. [YARDLEY, C. J.:—I doubt whether this can be called a Christian Court in the sense you seek to employ that term. We are bound to administer justice to all persons within our jurisdiction, whether they be Hindús, Mussalmáns, or Christians, without distinction of religion.] The third fund is of a strictly private character, and, therefore, improperly made the subject of an information.

YARDLEY, C. J.:—The last point taken is a plausible one, but it comes too late now. If there be anything in the objection to the information as regards the third fund, the defendant is not in any way damnified by our refusing to hear it now. It may be dealt with at the hearing, and shown by evidence to be so, if it is a charity of a private nature. The only inconvenience to the defendant will be that he will have to give an answer rather longer than one extending to the two funds only.

The other objections to the information are of no force. The English statute as to superstitious uses does not extend to India; certainly it is not applicable to the jurisdiction of this Court in cases of Native religious charities. This is not a novel instance of this kind in India. There have been several informations for Native charities filed in and entertained by this Court, and we are constantly called upon to administer such funds. There is no doubt as to the jurisdiction of the Court in such matters.

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The question whether the objects of this particular institution are sufficiently public to justify the interference of the Advocate General merited our serious consideration. At first we had some doubts on this point, but on considering the circumstances of this country I see a very strong analogy between the cases of Dissenting and Unitarian congregations in England, cited by Mr. Westropp, and Hindú religious foundations here. This analogy ought to govern the decision of the present question. I think, therefore, that the demurrer must be overruled.

I may add that I recollect cases of this nature in which the absence of the Advocate General has been put forward as an objection to the maintenance of the suit. In a recent case Mr. Le Messurier (Advocate General) abandoned as untenable an objection that a gift to say masses for the soul of a deceased person was void on the ground of its being a bequest for a superstitious use. He seemed to concede that the law against superstitious uses did not apply to religious endowments amongst natives or Roman Catholics in India.

JACKSON, J. :—The first question is whether Courts in this country will entertain suits for establishing or administering Native religious institutions. It has been decided that the statute of Edward VI. relating to superstitious uses does not apply to India. The case quoted by Mr. Lowndes from East's Notes 8 is not law. The case of *Mullick v. Mullick* (*ubi supra*) is conclusive of the Supreme Court's jurisdiction in Bengal. It has been frequently held that the Supreme Courts have jurisdiction to interfere in cases of Hindú religious charities. Moreover, there is a decree in the Recorder's Court at Bombay, dated 19th March 1803, *Sadasew Pandurang v. Vithoba Kanoji*, in which the Court decided a question as to the right of the Prabhu caste to worship in a temple at Rámvádi, and as to the right of Vithobá Kánoji

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and his heirs to the presentation and patronage of that temple. The case of *The Advocate General v. Dossa Laduck and others* (which was for establishing a Muhammadan religious institution), and the case of *The Advocate General v. De Mello*, prove that suits to maintain and establish what in England would be considered superstitious uses have been maintained in this Court. In the case of *The Advocate General v. Hartmann* the objection as to superstitious uses was given up.

Then it is said that by granting the prayer of this information we shall be propagating the Hindú religion; but that is not the case. If property were left by a testator with general directions to apply the same for the benefit of the natives, and we were to build a Hindú temple or place of worship out of such property, the case would be different; but this fund is not open: it is already appropriated to Hindú religious purposes, and we only act ministerially in carrying out the wishes of the subscribers, donors, and testators. Indeed, disastrous consequences would ensue if we did otherwise. No Native religious endowment would be safe from wrong-doers. We are bound by the Charter here to recognise the Hindú religion. The case of *Strauss v. Goldsmid*, which was cited today for the relator, proceeded on the same principle, inasmuch as there a bequest to enable persons professing the Jewish religion to observe its rites was held to be valid.

The only point of difficulty with me was whether this was a suit which might properly be brought in the name of the Advocate General. The question is very important, and often occurred to me when on the other side of India, but I was not asked, when Advocate General at Calcutta, to institute any such suit. I must say I am not aware of any case of the kind in Bengal, and until I heard the argument today I was in doubt as to the propriety of such a proceeding on the part of the Advocate General. In 1803, though a similar charity was enforced in the Recorder's Court here, the Advocate General's name was dispensed with. The Stat. 53 Geo. III., c. 155, s. 3, confers powers on the Advocate General similar to those of the Attorney General in England, subject nevertheless to the qualification that he is to be guided "by the circumstances of the case and the practice of the court." The Advocate General finds himself in a different country and be-

fore a different court, and must render his office as conformable to those new circumstances as he may. The Attorney General, notwithstanding that the State religion is a different one, can undoubtedly inform the Court on behalf of a dissenting charity : *vide Lady Hewley's Charity and John Wesley's Case*. There have been inquiries into the change of religion in sects. The Attorney General interfered in all these cases without question. The corresponding officer of the Crown in another country in different circumstances is surely justified in interfering in cases of a different but lawful religion. Where there is a religion tolerated by the State, the Crown will see that that religion is enjoyed, though it may be strongly at variance with the State religion in doctrine, as in the case of Roman Catholic and Unitarian charities. I agree that the Hindú religion is more amply recognised here than the religion of dissenters in England, and I think the argument founded upon analogy is unanswerable.

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Then if these charities are fit objects for the interposition of the Court, the Advocate General would be the best person to conduct a suit for that purpose. The degree in which the Advocate General should interfere in the administration of such charities is altogether a different question. A general control of the suit would probably be considered sufficient, and any very minute interposition in the details of such charities should be avoided.

It was lastly urged by Mr. Lowndes that the third charity is a private charity. This might have been a strong point, but, to the best of my recollection, it was not mentioned by Mr. Lowndes in his opening speech, nor is it raised distinctly on the demurrer; and I may say that a fund set apart for the feasts and ceremonies of the caste would *primâ facie* appear to me to constitute a charitable fund. However, the third objection comes too late. The Court, moreover, looks with disfavour on demurrers, and will construe them strictly. We do not find that the objection is raised with sufficient precision in the demurrer; and, therefore, will not allow it to be raised. To permit it to be argued now would be a surprise on the other side. The demurrer must accordingly be overruled with costs.