Neutral Citation Number: [2005] EWHC 1089 (Ch)

Case No: HC04C03885

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 27th May 2005

Before :

THE VICE CHANCELLOR

- -

Between :

Her Majesty's Attorney-General **Cla**

- and -

The Trustees of the British Museum **Defe**

- -

- -

Mr William Henderson (instructed by **The Treasury Solicitor**) for the **Claimant**

Christopher McCall QC (instructed by **Ian A Doubleday**) for the **Defendant**

Mr Guy Newey QC and Miss Clare Ambrose (instructed by **Harbottle & Lewis**) for **The Commission for Looted Art in Europe** – Intervening with the leave of the Court

Hearing dates: 24th May 2005

- -

Judgment

The Vice-Chancellor :

Introduction

1.
The Trustees of the British Museum ("the Trustees") were incorporated by s.14 British Museum Act 1753 26 Geo II cap.22. By s.9 of the same Act it was provided that the "several collections, additions and library" of the Museum "shall remain and be preserved...for public use to all posterity". Subject to various powers of disposal conferred on the Trustees by subsequent enactments, none of which is presently relevant, the obligation imposed by s.9 of the 1753 Act remained in force until the enactment of the British Museum Act 1963.

2.
In 1946 the Trustees bought at auction at Sotheby's for the aggregate sum of nine guineas three Old Master drawings, namely The Holy Family by Niccolo dell'Abbate, An Allegory on Poetic Inspiration with Mercury and Apollo by Nicholas Blakey and Virgin and infant Christ, adored by St Elizabeth and the infant St John by Martin Johann Schmidt. At about the same time the Keeper of Prints at the British Museum, Mr Campbell Dodgson, acquired a fourth, St Dorothy with the Christ Child by a follower of Martin Schongauer. This drawing was part of the bequest made by Mr Dodgson in favour

of the British Museum which took effect in 1949. Since 1946 and 1949 respectively those drawings have been held by the Trustees as part of the collections of the British Museum.

3.
On 30th September 1963 the British Museum Act 1963 came into force in the place of inter alia the 1753 Act. It provided for the Trustees to continue as a body corporate (s.1) and conferred on them power, subject to the restrictions imposed on them by virtue of any enactment (whether contained in that Act or not) to enter into contracts and other agreements, to acquire and hold land and other property, and to do all other things that appear to them necessary or expedient for the purposes of their functions (s.2). S.3(1)-(3) require the Trustees to keep the objects comprised in the collections at the places and in the manner there specified. S.3(4) provides:

> "Objects vested in the Trustees as part of the collections of the Museum shall not be disposed of by them otherwise than under section 5 or 9 of this Act [or section 6 of the Museums and Galleries Act 1992]."

S.5 authorises the Trustees to dispose of duplicates, objects made after 1850 and objects unfit to be retained in the collections of the Museum. It also entitles the Trustees to destroy useless objects. S.9 of that Act and s.6 of Museums and Galleries Act 1992 entitle the Trustees to transfer objects comprised in the collections of the British Museum to the Trustees of any other of the specified national museums.

4.
In 1970 Cross J determined that the Court or the Attorney-General may authorise:

> "a payment...out of charity funds which is motivated simply and solely by the belief of the trustees or other persons administering the funds that the charity is under a moral obligation to make the payment",

see **Re:Snowden** [1970] Ch.700, 709.

5.
In 2002 the Trustees considered a claim advanced by The Commission for Looted Art in Europe ("CLAE") on behalf of the heirs of the late Dr Feldmann that each of the four drawings had been the property of Dr Feldmann in Brno, Czechoslovakia and had been stolen from him on 15th March 1939 by the Gestapo. The claim was and is for restitution not compensation alone. At a meeting of the Trustees held on 27th July 2002 it was agreed that:

> "6.4.3 Having regard to the cogency of the evidence adduced within the context of what were acknowledged to be the exceptional atrocities committed during the 1933-1945 era, the claimants request for the return of these drawings ought to be acceded to if and to the extent permissible by law.
>
> 6.4.4 With the agreement of the claimants and [Department for Culture, Media and Sport], this case should be referred to the Spoliation Advisory Panel for an opinion on the appropriate action to take in response to the claim given the fact that the claim is solely for restitution."

6.

Before the claim was put before the Spoliation Advisory Panel the Trustees sought the advice of counsel and in implementation of that advice wrote to the Attorney-General on 29th August 2003. The Trustees expressed the view that:

> "..if the Attorney-General were to take a positive view of his powers to sanction Snowden-type action in relation to objects now comprised in a national collection and subject to an acknowledged holocaust restitution claim, he would offer a straightforward solution to the debate in the present case, in respect of which equity requires a swift solution."

7.
The Attorney-General was concerned whether as a matter of statutory construction the express prohibition contained in s.3(4) British Museum Act 1963 (as amended) on the disposal of objects comprised in the collections of the British Museum prevents the objects to which that prohibition applies from being disposed of under the **Re:Snowden** principle. To resolve that question he issued the Part 8 claim now before me. It seeks the determination of the Court as to:

> 1. Whether, as a matter of law, where the Defendants consider that they are under a moral obligation to return an object which forms part of the collections of the British Museum to a previous owner of the object or his heirs by reason of the circumstances leading up to their acquisition of the object, it would be possible for the principle known as the principle in **Re: Snowden** [1970] Ch. 700 to be applied so as to permit such a return:
>
> (a) whether or not the object is one to which s.5(1) or 5(2) British Museum Act 1963 applies?
>
> (b) where the object is one to which s.5(1) or 5(2) British Museum Act 1963 applies?
>
> (c) at all?
>
> 2. Whether, in circumstances where:
>
> (a) The Defendants are sued for the return of an object comprised in its collections by the object's former owner or his successors; and
>
> (b) But for the provisions of the British Museum Act 1963 the principle in **Re: Snowden** might have been applied so as to permit such return of the object, the Defendants might properly on the ground (and only on the ground) that they regarded themselves as under a moral obligation to return the object to the person or persons suing them for its return, omit to plead or to rely upon a defence based upon the provisions of the Limitation Act 1980 or some earlier Limitation Act which would or might be available to them and, if so, whether they could do so (i) with or (ii) without the approval of H.M. Attorney General.

Specifically

3. On the footing that 4 drawings which were looted from a Dr Feldmann in 1939 and which were subsequently acquired by the Defendants form part of the collections of the British Museum, whether, in the event that (i) the Defendants should consider themselves, by reason of the fact of the drawings having been looted, under a moral obligation to return the drawings to the heirs of a Dr. Feldmann and (ii) the Attorney General should approve such return, the **Re: Snowden** principle would be capable of being applied so as to permit the Defendants (if the Attorney General approved) properly to return the drawings to the heirs of Dr. Feldmann."

8.
I have been addressed on those questions by counsel for the Attorney-General and for the Trustees. In addition I gave leave to CLAE to intervene so that counsel on its behalf might address me. I accepted a short witness statement made on behalf of CLAE by its solicitor. The Attorney-General, the Trustees and CLAE all accept that I must approach the issues on the assumption, which CLAE does not admit, that the heirs of Dr Feldmann do not have a claim, whether at law or in equity, against the Trustees for restitution of the drawings or any of them. It must follow that in the terms of s.3(4) I must treat each drawing as "...vested in the Trustees as part of the collections of the Museum.."

The Background

9.
The issues for my determination are, ultimately, bare issues of law but they arise against a background to which the Trustees and CLAE attach the greatest importance. It is right that I should draw attention to it.

10.
On 5th January 1943 Her Majesty's Government joined with sixteen others to make the Inter-Allied Declaration against Acts of Dispossession committed in Territories under Enemy Occupation or Control (Cmd.6412). The declaration contained a formal warning "to all concerned" of the declarers' intention "to do their utmost to defeat the methods of dispossession". They reserved "all their rights to declare invalid any transfers of or dealings with property, rights and interests of any description whatsoever." As pointed out in note 6 it had been decided "as a first step" to establish a committee of experts "to consider the scope and sufficiency of the existing legislation...for the purpose of invalidating transfers or dealings...in all proper cases."

11.
On 7th May 1944 Her Majesty's government formed "the British Committee on the Preservation and Restitution of Works of Art, Archives and Other Material in Enemy Hands", otherwise known as the Macmillan Committee. It was dissolved in 1946 because the chairman, Lord Macmillan, considered that it could do little until an International Restitution Commission was established.

12.
In July 1944 the Bretton-Woods Agreement, in Art VI, recommended all governments represented at the United Nations Monetary and Financial Conference held from 1st to 22nd July 1944 to call upon the governments of all neutral countries to take immediate measures to prevent disposition of looted property and to prevent its fraudulent concealment.

13.
It is evident from the correspondence and other documents produced by Mr Neil Macgregor, the Director of the British Museum, that the Director and Trustees in the 1940s were concerned for the

plight of monuments in war zones and works of art in enemy occupied Europe and recognised that the scale of destruction and looting of historic monuments and private and national collections fell into a category which by the standards of the time was exceptional and required urgent mitigation during and extensive redress after the War. Mr Macgregor adds:

> "When the Trustees acquired the drawings in 1946 and 1949 they did so on the mistaken assumptions that title was in each case in order, and given all the facts it is clear that, had they discovered that the drawings had been stolen by the Nazis, they would have expected to return them to their rightful owner in accordance with the declared policy intentions of His Majesty's Government, which they had helped to shape. In the circumstances prevailing at the time and in view of the professional integrity of the people concerned, I think it likely that the assumptions about title were reasonably and honourably made."

14.
In 1998 there was a conference in Washington on Holocaust Era Assets. The conference endorsed eleven non-binding principles designed to assist in resolving issues relating to Nazi-confiscated art. Articles 8 and 11 provide:

> "8. If the pre-war owners of art that is found to have been confiscated by the Nazis and not subsequently restituted, or their heirs, can be identified, steps should be taken expeditiously to achieve a just and fair solution, recognising this may vary according to the facts and circumstances surrounding a specific case."

.....

> "11. Nations are encouraged to develop national processes to implement these principles, particularly as they relate to alternative dispute resolution mechanisms for resolving ownership issues."

15.
On 17th February 2000 the Department for Culture, Media and Sport set up the Spoliation Advisory Panel, to which I have already referred, under the chairmanship of the Rt Hon Sir David Hirst. Its purpose is to assist claimants, museums and galleries in the consideration of claims and to recommend appropriate action to resolve particular claims. On 8th June 2000 the Trustees submitted evidence to the House of Commons Select Committee Inquiry into "Cultural Property: Return and Illicit Trade". It explained that if it were established that the Museum was holding objects looted by the Nazis during the holocaust the Museum would wish to find a way to achieve a return of those objects to the victim's family.

16.
Thus if the jurisdiction to authorise the disposition of objects forming part of the collections of the Museum based on the decision in **Re:Snowden** is made out there are good reasons to think that the moral obligation needed to justify its exercise will be established too. But that will be a matter for the Attorney-General on which he has reserved his position.

Re: Snowden [1970] Ch.700

17.

Before considering the submissions of counsel it is convenient to describe the circumstances and decision in **Re Snowden** in more detail. There were two summonses before Cross J, one relating to the will of Norman Snowden, the other concerning the will of Florence Henderson. In the case of the will of Norman Snowden, due to sales made in his lifetime, bequests of his shareholdings in specific companies had been adeemed but, in consequence, pecuniary legacies and bequests of shares of residue were much greater than the Testator could have contemplated. The pecuniary and residuary legatees were six charities. They agreed, if the Attorney-General had no objection, that various sums should be paid to the specific legatees. In the case of the will of Florence Henderson a manuscript but unattested addition to the will was omitted from probate. Under the will, as proved, the residue after payment of various pecuniary legacies was left to charity generally. The administrators sought the approval of the Court, if the Attorney-General consented, to give effect to the manuscript alteration. Thus, in each case, approval was sought for a transaction in which charity would forego money to which it was entitled.

18.
The argument of counsel for the Attorney-General, as reported, included the following passage (p. 706):

> "It has been a long established view that the Attorney-General has no power to authorise the application of the funds of a charity for non-charitable purposes. This precise problem has been put to counsel for the Attorney-General for over 40 to 50 years. Each counsel has treated it as clear law. In the present case the point of moral obligation has been raised."

19.
In his judgment (p.708) Cross J indicated that he would not be justified in dissenting from that view unless he was satisfied that it was wrong. He was so satisfied. He said (p.710F-G):

> "In the result I am satisfied that the court and the Attorney-General have power to give authority to charity trustees to make ex gratia payments out of funds held on charitable trusts. It is however a power which is not to be exercised lightly or on slender grounds but only in cases where it can fairly be said that if the charity were an individual it would be morally wrong of him to refuse to make the payment."

20.
Cross J had earlier (pp.709/710) given four reasons for arriving at that conclusion. They may be summarised as follows:

> (1) As charity depends for its continued existence on the recognition by others of moral obligations to give it would be odd if a charity could not likewise give effect to its own moral obligations.
>
> (2) Analogous powers exist in other cases, such as the management of the property of mental patients and what is for the benefit of an infant.
>
> (3) In sanctioning compromises on behalf of charities the Court does pay regard to moral obligations.

(4) The Attorney-General has power to relieve trustees from their strict legal obligations to make full restitution for breaches of trust committed by them.

21.
The authority of the Attorney-General so found by Cross J has been exercised on many occasions since 1970. By s.27 Charities Act 1993 a comparable authority was given to the Charity Commissioners. So far as relevant that section provides:

"(1)....the Commissioners may by order exercise the same power as is exercisable by the Attorney-General to authorise the charity trustees of a charity –

(a) to make any application of property of the charity, or

(b) to waive to any extent, on behalf of the charity, its entitlement to receive any property,

in a case where the charity trustees –

(i) (apart from this section) have no power to do so, but

(ii) in all the circumstances regard themselves as being under a moral obligation to do so."

The Submissions of Counsel

22.
It is common ground that none of the exceptions to the prohibition imposed by s.3(4) is applicable here. None of the drawings is a duplicate, unfit to be retained or useless. None of them was made after 1850 and the person in whose favour the disposition would be made is not another national museum. Counsel for the Attorney-General submitted that in those circumstances the prohibition was absolute and precluded any disposition, whether by act or omission, by the Trustees in favour of the heirs of the late Dr Feldmann. He contended that:

(1) The Court will not direct or approve anything which is inconsistent with a statute.

(2) The powers of a statutory corporation such as the Trustees extend no further than what is expressly stated in its governing statutes, is necessarily and properly required for carrying into effect the purposes of its incorporation or such as may fairly be regarded as incidental to or consequential on those things which the legislature has authorised.

(3) Where Parliament has specified by statute where the public interest lies, neither the Court nor the Attorney-General may take a different view.

23.
In relation to the first submission counsel for the Attorney-General referred me to five authorities. I shall take them in chronological order. The first is **Re: Shrewsbury Grammar School** (1849) 1 Mac

& G 324. In that case the trustees had in their hands accumulations of income in excess of what was required to achieve the objects of the charitable trust. The question was how to apply them. Having upheld the contention that what was described as Sir S.Romilly's Act conferred sufficient jurisdiction to deal with the matter, the Lord Chancellor continued (p.333):

> "...it is of constant occurrence that the court is asked to inquire whether an Act of Parliament shall be applied for. If it is in regard to such a matter as this court has no jurisdiction to alter, or which is already provided for by Act of Parliament, it is obvious it requires the authority of Parliament in such cases to enable the trustees to depart from that which is their prescribed duty, according to the rule existing."

24.
The Berkhamstead School Case (1865) LR 1 Eq.102 concerned a school regulated inter alia by a statute of Edward VI. Page-Wood V-C approved a scheme for its further regulation which permitted the charging of fees for all pupils, notwithstanding that the statute provided that some boys should be educated entirely gratuitously. While the scheme so approved appears to have been contrary to the provisions of the founding statute the question of jurisdiction was not raised but the variation was justified because the original purposes of the statute had become impractical.

25.
In **Attorney-General v Governors of Christ's Hospital** [1896] 1 Ch. 879 the Attorney-General propounded a scheme whereby certain endowments, excepted from the operation of the Endowed Schools Act 1869, would be made over to another governing body in augmentation of the endowments held by them subject to the provisions of that Act. Chitty J refused to do so. He said (p.888):

> "I hold that it is beyond the jurisdiction of the Court to sanction the Attorney-General's scheme in the face of the opposition of the existing governing body. Their title is founded on Royal Charter, and is established by Act of Parliament. To whatever lengths the Court may have gone, it has never assumed legislative authority: it has never by a stroke of the pen at one and the same time revoked a Royal Charter and repealed an Act of Parliament. It has never ousted from its rights of administering the charitable trusts of such a body as the present governors against their will, and that, too, in a case where no breach of trust is charged."

Later (p.889) he observed that to establish such a scheme as that submitted by the Attorney-General nothing less than an Act of Parliament would suffice.

26.
In **Re:Shipwrecked Fishermen and Mariners' Royal Benevolent Society** [1959] Ch.220 Danckwerts J approved a scheme conferring wider powers of investment than those authorised by the statute incorporating the charity. The arguments and his conclusion are evident from the following passage from his judgment (p.227):

> "It is said on behalf of persons interested in the charity that the court is empowered to make a scheme to authorize a wider range of investments in this case, because the matter is not really covered by the very limited power of investment contained in section 11 of the Act of 1850. On the other hand, it is said on behalf of the Attorney-General that that is not the right way to construe section 11 of the Act of 1850: that although in form

> it is a positive permission, it involves a negative prohibition and, therefore, to allow any wider power of investment of the trust funds would be to attempt to alter the statute by "a stroke of .. the pen" and the court has no power to do that.
>
> The cases to which I have been referred are far from clear, but I think the general principle which emerges is that the court cannot alter the said statute by a stroke of the pen and cannot therefore direct anything which is inconsistent with the terms of the Act of Parliament in question. The conclusion which I reach is that to allow a wider power of investment is to confer additional powers of investment and is not, therefore, inconsistent with but is in aid of and supplemental to the powers of investment which are conferred by section 11 of the Act. On that view it would be open to the court to allow what has been done by settling a scheme conferring the necessary powers."

27.
These cases were considered by Buckley LJ in **Construction Industry Training Board v Attorney-General** [1973] Ch 173 where he said (p.187):

> "It has long been recognised that, where a charity is established by an Act of Parliament, the court will not exercise its jurisdiction in any way which will conflict with the provisions of the Act (**In re Shrewsbury Grammar School** (1849) 1 Mac. & G. 324, 333), but this does not mean that in such a case the jurisdiction of the court is entirely ousted. In **In re Shipwrecked Fishermen and Mariners' Royal Benevolent Society** [1959] Ch. 220, Danckwerts J. expressed the view (in which I respectfully concur) that the court has power to sanction a scheme in relation to a charity established by an Act of Parliament in respect of matters not in conflict with the provisions of the Act, and even in respect of those matters which are regulated by Act of Parliament the court can entertain an application by charity trustees to consider whether they should apply to Parliament for an amending Act: **In re Shrewsbury Grammar School**, 1 Mac. & G. 324. It seems that the position may be similar in the case of a charity incorporated by Royal Charter: **In re Whitworth Art Gallery Trusts** [1958] Ch. 461."

28.
Thus the distinction is drawn between those cases where the relevant Act prohibits what is sought to be done and those, where no statutory prohibition is imposed but the trustees seek powers going beyond what is expressly authorised. The Court may intervene in the latter case but not the former. In this connection it is convenient to record that Counsel for the Attorney-General accepted that if a claim is made for restitution of an object comprised in the collection of the Museum it may be compromised on terms which include a disposal of the object by the Trustees in favour of the claimant. In such a case if the claim had been made good it would have been established that the object in question was not and never had been an object to which the prohibition contained in s.3(4) applied. I can see nothing wrong with a bona fide compromise to that effect, compare **Binder v Alachouzos** [1972] 2 QB 151.

29.
In relation to his second submission counsel for the Attorney-General referred me to **Attorney-General v Great Eastern Railway Co**. (1880) 5 App.Cas.473 and the citations with approval from the speeches of Lords Blackburn and Selborne made by Lord Templeman in **Hazell v Hammersmith**

LBC [1992] 2 AC 1, 29. I did not understand counsel for either the Trustees or CLAE to dispute the proposition in support of which these citations were relied on. I accept the proposition.

30.
In relation to his third submission counsel for the Attorney-General referred me to **National Anti-Vivisection Society v IRC** [1948] AC 31. At pages 50 and 62 Lords Wright and Simonds quoted with approval from Tyssen on Charitable Bequests 1st Ed. 176/7

> "However desirable the change may really be, the law could not stultify itself by holding that it was for the public benefit that the law itself should be changed. Each court in deciding on the validity of a gift must decide on the principle that the law is right as it stands."

So, submits counsel, the court cannot enter into the question whether the public interest is better served by observing the statutory prohibition contained in s.3(4) or permitting trustees to give effect to moral obligations at the expense of their trust funds.

31.
Counsel for the Trustees suggested in his written argument that the issue resolves itself into three questions: (1) does the Snowden principle apply to charities "enshrined in statute", (2) if so is there anything special about the British Museum to exclude the principle, and if so (3) may the Snowden principle be applied so as to permit the Trustees to abstain from relying on the Limitation Acts 1939 and 1979. In relation to the third submission counsel accepted in oral argument that the Trustees did not suggest that they could do indirectly what they could not achieve directly.

32.
Counsel for the Trustees developed these submissions in oral argument. He pointed out that the **Snowden** jurisdiction was exercisable altogether out of court so that the cases relating to Court approved schemes on which counsel for the Attorney-General relied were not directly in point. He suggested that the jurisdiction existed to deal with those exceptional cases in which a transaction in the public interest should not be inhibited by too strict a reliance on the constitution of the charity, be it statutory or merely fiduciary. He relied on the fact that the judgment of Cross J in **Re Snowden** was unqualified in its application to charity generally whatever the nature of its foundation. He suggested by reference to **In re Shipwrecked Fishermen and Mariners' Royal Benevolent Society** [1959] Ch. 220 that the **Snowden** jurisdiction was in aid of and supplemental to the purposes of charity in permitting in very limited and unforeseen circumstances transactions which would otherwise constitute breaches of trust.

33.
Counsel for the Trustees also pointed to the lack of any direct remedy for one wishing to challenge the actions of the Attorney-General or the Trustees for he on behalf of the Crown as parens patriae is the sole representative of the beneficial interest. He relied on the circumstance that the exercise of the **Snowden** jurisdiction did not give rise to any permanent alteration in the nature of the charity. He asked rhetorically whether the Attorney-General is precluded by the constitution of a charity from serving the public interest as he sees it. And why, he asked, should the trustees of a charity be bound by their trust to do what they consider to be morally wrong? He suggested that the statutory bar contained in s.3(4) did not oust the **Snowden** jurisdiction but was a material factor to be considered at the second stage, namely, whether in the exercise of that jurisdiction the Attorney-General should permit the Trustees to give effect to the moral obligation they feel.

34.
Counsel for CLAE adopted the submissions of counsel for the Trustees. In addition he observed that in **Re Snowden** Cross J recognised the part played by moral merits and submitted that such observation must apply to both statutory and non-statutory charities. And if, as he submitted, moral merits may be relevant to issues of compromise on legal merits they must be suitable for consideration alone and in the absence of any legal merits. He suggested that the bar imposed by s.3(4) cannot be absolute because counsel for the Attorney-General accepted that it did not apply in the case of a compromise. If it did not exclude cases of compromise then why, he asked, should it exclude the **Snowden** jurisdiction. Both, he submitted, are the normal incidents of a charitable trust.

35.
In reply counsel for the Attorney-General submitted that in no previous case was there any impediment to the exercise of the **Snowden** jurisdiction such as s.3(4). It is that provision, he submitted, which makes all the difference.

Conclusions

36.
It is appropriate to acknowledge at the outset the evident sincerity of all parties to these proceedings. The circumstances give rise to a dilemma for each of them. It is in precisely those circumstances that it is essential to ascertain the relevant principles of law and to apply them so that the dilemmas are resolved by the law and not otherwise. It is convenient to start with a series of propositions, many of them elementary.

37.
First, neither the Crown nor the Attorney-General as a minister of the Crown has any power to dispense with due observance of Acts of Parliament. The pretended power of dispensing with or suspending Acts of Parliament was emphatically rejected by the Bill of Rights 1688. Similarly the Courts and the Judges are committed to upholding the law, not sanctioning departures from it without lawful authority. Accordingly the first essential step is to ascertain what is prohibited by s.3(4) British Museum Act 1963.

38.
Second, s.3(4) applies to “objects vested in the Trustees as part of the collections of the Museum”. There is no doubt that, given the basis on which this application is made, each of the four drawings is such an object. It is, of course, possible that in other proceedings the heirs of Dr Feldmann may establish title to the drawings with the consequence that they will never have been “part of the collections of the Museum”. In that event s.3(4) will not preclude a disposition by the Trustees in their favour. This conclusion leads to two further propositions.

39.
Third, the compromise of a claim by the heirs of Dr Feldmann to be entitled to the drawings does not involve any breach of s.3(4). A bona fide compromise of the issues of fact involved in the claim is as binding as the decision of the Court to that effect, see **Binder v Alachouzos** [1972] 2 QB 151. It may involve a recognition that the drawings have never been part of the collections. In that event they have never been subject to the prohibition contained in s.3(4). For this reason I reject the argument which suggests that the power to compromise is somehow an unexpressed exception to s.3(4). It is not an exception but the consequence of the limited application of s.3(4) only to objects which are part of the collections.

40.
Fourth, for similar reasons I reject the argument that as moral considerations may be relevant to an exercise of the power to compromise they may alone justify the non-observance of s.3(4) in relation to objects which are part of the collections. They are, alone, incapable of disapplying s.3(4) or justifying a failure to observe its terms.

41.
Fifth, it follows that any disposition by the Trustees in favour of the heirs of Dr Feldmann can be justified, if at all, only by reference to a statutory exception to s.3(4). It is not suggested that the drawings fall within any of the express exceptions provided for in ss.5 or 9 of the British Museum Act 1963 or in s.6 Museums and Galleries Act 1992. It was submitted that cases falling within the **Snowden** jurisdiction constitute an implied exception. I reject that submission. The very existence of the express exceptions negatives the recognition of further but implied exceptions. It is true that at the time British Museum Act 1963 was before Parliament Cross J had not decided **Re Snowden**. But the enactment of the Museums and Galleries Act 1992 provided a Parliamentary opportunity to insert a further exception if that had been thought desirable.

42.
Sixth, if the drawings are part of the collections of the Museum and there is no express or implied exception in the British Museum Act 1963 itself it would require some other statutory authority to justify ignoring the prohibition on dispositions. None has been suggested in this case. There are provisions in the Charities Act 1993 whereby schemes in relation to the funds of a charity regulated by statute may be made subject to obtaining the requisite parliamentary approval, see ss. 15(3) and 17. Similarly there is the jurisdiction to authorise applications to Parliament described by the Lord Chancellor in **Re: Shrewsbury Grammar School** (1849) 1 Mac & G 324, 333. Though such jurisdiction is rarely exercised now its existence demonstrates that nothing less than some statutory authority is required to justify a departure from statutory obligations imposed on trustees.

43.
Seventh, s.3(4) prohibits any disposition by the Trustees. The word “disposition” is not defined. It is of its nature a word of wide import. The context in which it is used does not require a restrictive interpretation; quite the reverse. I see no reason, and none was suggested in argument, to limit its operation to acts so as to exclude omissions. Property in goods may be passed by a failure to act as well as by an active delivery. Consequently I consider that a failure to rely on relevant provisions of the Limitation Acts 1939 and 1980, otherwise than on legal advice, in order to effect a transfer of the drawings to the heirs of Dr Feldmann is as prohibited by s.3(4) as is a delivery by the Trustees. I did not understand the Trustees in the oral argument of their counsel to contend otherwise.

44.
Eighth, the cases in which the Court has altered the trusts or other provisions of a charity regulated by statute, namely, **Re:Shipwrecked Fishermen and Mariners’ Royal Benevolent Society** [1959] Ch.220 and **Re Royal Society’s Charitable Trusts** [1956] 1 Ch. 87, depend on the proposition that the conferment of a limited power did not in those cases give rise to an implied prohibition against any action outside that limit. The proposition may or may not have been justified in the particular case but that can have no effect on a case such as this when the statutory provision plainly imposes a prohibition and the extent of the prohibition is clear.

45.

For all these reasons I conclude that no moral obligation can justify a disposition by the Trustees of an object forming part of the collections of the Museum in breach of s.3(4). There is nothing in the decision of Cross J in **Re Snowden** to suggest otherwise. The fact, if it be one, that the four considerations which led Cross J to decide that case in the way that he did apply in this case cannot justify a breach of s.3(4). What is required is some statutory authority by way of exception. There is none and it is beyond the power of the Attorney-General to provide one. It follows that I reject the submission that s.3(4) only becomes relevant at the stage when the Attorney-General decides whether or not to exercise the **Snowden** jurisdiction. The existence of s.3(4) excludes any such jurisdiction in relation to acts or omissions it prohibits.

46.
In the case of the Benevento Missal the Spoliation Advisory Panel concluded that restitution by the Trustees of the British Library was barred by s.3(5) British Library Act 1972 applying s.3(4) British Museum Act 1963. In paragraph 77 of the report dated 23rd March 2005 (2005 HC 406) the panel under the chairmanship of the Rt Hon Sir David Hirst recommended to the Secretary of State that legislation should be introduced to amend the British Museum Act 1963, The British Library Act 1972 and the Museums and Galleries Act 1992 so as to permit restitution of cultural objects of which possession was lost during the Nazi era (1933-1945). The panel also recognised the possibility that legislation might relate to a specific object or objects. I have, in effect, reached the same conclusion. In my judgment only legislation or a bona fide compromise of a claim of the heirs of Dr Feldmann to be entitled to the four drawings could entitle the Trustees to transfer any of them to those heirs.

47.
Accordingly, subject to any further argument as to the form of my order, I will answer questions 1(a), 2 and 3 raised by the Attorney-General in the Part 8 claim form in the negative. Questions 1(b) and 1(c) do not arise and I heard no separate argument on them. Accordingly I shall not answer those questions.