IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU

CIVIL CASE No 57 of 1996

BETWEEN: **The Vanuatu Mission of the Seventh Day Adventist Church** as represented by:

Pastor Errol Wright
First Plaintiff

Pastor Daniel John
Second Plaintiff

Tanito Jeremiah
Third Plaintiff

AND: **The Seventh Day Church of the Republic of Vanuatu**
First Defendant

AND: **Arnold Masengnalo**
Second Defendant

AND: **Hollingson Issachar**
Third Defendant

AND: **Charlie Kaloris**
Fourth Defendant

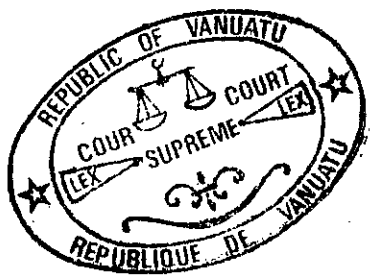
AND: **Thompson Bule**
Fifth Defendant

AND: **Timothy Bakebau**
Sixth Defendant

Coram: The Chief Justice
Mrs Susan Bothman Barlow for the plaintiffs
Miss Marie Jeanne Pierre for the defendants

JUDGMENT

This is a representative action begun by originating Summons dated 16 April 1996. The brief and undisputed facts of the case are as follows:



1. On 19 December 1995 the Vanuatu Mission of the Seventh-Day Adventist Church (the plaintiff church) an unincorporated charitable organisation, applied to the Vanuatu Commissioner of Financial Services, Mr Julian Ala, to be incorporated as a company limited by guarantee under the Companies' Act.

2. By letter dated 21 March 1996, Mr Ala advised that he had received representations from two groups purporting to represent the Seventh-Day Adventist Church in Vanuatu and requested clarification and a copy of the certificate of registration, as a Religious Body, of the plaintiff church.

3. On 27 March 1996, Mr Ala wrote again indicating that he would not proceed with any registration of any entities bearing the name Seventh-Day Adventist Church until the issue as to who is the true and correct users of the name is determined by the Court.

4. On 29 March 1996, the Secretary of the plaintiff church, the second plaintiff herein, lodged an application for registration under the Religious Bodies Act.

5. On 2 April 1996, the second plaintiff was advised by letter from the Executive Officer of the Department of Culture and Women's Affairs, Mr Lazare Asal, that the application was being deferred because the Government intended to review the Act.

6. On 16 April 1996, the Originating Summons was filed in the Supreme Court seeking a Declaration that the plaintiff church was the true Adventist Church in Vanuatu and an injunction restraining the defendants from using the names Seventh-Day Adventist Church, SDA Church or Seventh-Day Church and or similar variations of the same.

7. On 24 April 1996, a further letter was sent by Mr Asal to the second plaintiff advising that an application had been received from Mr Hollingson Issacher, the third defendant herein, to register a body under the Religious Bodies Act and that neither applications would be registered at the present time.

The basis of the plaintiff church's application before the Court is contained in two Affidavits, one by Pastor Wright and the other by Pastor Townend respectively, and in the unchallenged evidence given by both to the Court. In brief it indicates that the Seventh-day Adventist Church is well-known world-wide and is a respected religious organisation, of some antiquity, which was first established in Vanuatu in 1912. The organisation owns and runs several charitable enterprises including dispensaries, schools and places of worship around the world and more importantly, for the purpose of this application, in Vanuatu. It has enormous goodwill in its name and relies on it to draw financial support from members of the general public in order to finance its various charitable enterprises. It has, in other words, a great financial 'attractive force' to its name. It is a very professional religious and charitable organisation, with a proper hierarchy and constitution. The defendants, it is alleged, are a breakaway group of the same order (and that fact is not disputed) who wish to call themselves the Seventh-Day Church of the Republic of Vanuatu. This, it is alleged by the plaintiffs, would cause great confusion in

the minds of the general public and could hinder the charitable works of the 'mother organisation' who are well established and depend on public donation to run their charity. It is further alleged that the use by the defendants of the plaintiff church's name would be a misrepresentation to the public leading to the tort of passing-off which would damage the plaintiff church in its commercial or quasi-commercial activities. It would lead to finances necessary for the plaintiff's charitable works to be diverted to the defendants, by the public being mislead into believing that they are dealing with the mother organisation, when in fact they would be contributing to a very small break-away faction. The evidence given by Pastor Townend and Pastor Wright was not challenged and the defendants called no evidence. It was accepted that the Plaintiffs did indeed represent the 'mother church' and that they themselves were a breakaway faction. Nor was it disputed that the plaintiff had great goodwill and commercial attractive force. The defendants merely submitted that the plaintiffs' application had no legal basis, relying for that submission on the decision of the Court of Appeal in England in the case of Kean v McGivan [1982] FSR; 119. They did not contend that there was no locus standi for bringing a representative action, and indeed if they had it would have been bound to fail. There are a number of cases that establishes that such actions can be brought in Vanuatu; see Kalpokas v Lini Civil case No 127 of 1991 and Korman & Jimmy v Mensul Civil case 106 of 1995, and I need not go into the facts of those cases as they are well-known. They are clear authority for the proposition that the right to bring representative actions in Vanuatu is long established under our rules. The defendants, nevertheless, rely on the English case of Kean v McGiven above for the proposition that such actions are ill-founded in cases that are not traditionally "a trade situation". The brief facts of that case were that the plaintiff was one of the founder members of a small northern-England based political party called the Social Democratic Party, which had been formed in July 1979. The defendants were members of another party, again calling itself the Social Democratic Party, formed in March 1981. The plaintiff, and six other then plaintiffs, sought an interlocutory injunction to restrain the defendants from using the name "Social Democratic Party." The motion was dismissed and the plaintiff appealed and the appeal was dismissed. The reasons for dismissing the appeal were given by Lord Justice Ackner (as he then was) as follows:

> *"It is well settled, and I do not need to refer to the text books; it is amply set-out in the text books and in particular in Halsbury and in Clarke and Lindsell, that apart from statute there is no property in a name* ***as such; and, in the absence of misrepresentation or some malicious motive,*** *a man or woman has the right to use not only his own name but to adopt the name of another for himself or his property. This is so despite the fact that this can give annoyance and inconvenience, ... However, if a particular name is used in connection with a business or a profession, it may achieve a right to prevent another person from using that name in a manner likely to cause confusion in the minds of members of the public. But the basis of a right of action in passing-off is that the conduct of the defendant is such that the public may be led to believe that the goods that the defendant is offering are in fact the goods or services of the plaintiff. The property which is said to be injured in that situation is not the name or the description of the goods* ***but the right to the goodwill of the business which***

results from the particular commercial activity. *Therefore the Courts do not* ***in general*** *interfere to protect a non-trader. I hasten to add that of course the word "trade" is widely interpreted ...* ***Thus the action lies where there is a real possibility of damage to some business or trading activity.*** *Therefore the plaintiff must establish that in some sense he is carrying on a business with which the trade* ***or public*** *will be led to associate the defendant's activities. In this case, as Mr Keen very frankly accepted at the outset of his very carefully set out submissions, we are not concerned with goods or with a business;* ***nor was Mr Kean able to say in the course of his submissions that there are any commercial activities carried on by what I refer to as his party ...*** *Such being the case, although Mr Kean understandably drew our attention to a number of authorities which dealt with circumstances in which confusion can arise- circumstances in which despite the narrowness of the locality the remedy can still operate- he was unable to draw our attention to any situation where the remedy of bringing a passing-off action has operated in a situation where there was no* ***trade*** *in the* ***widest meaning*** *of that word;* ***no commercial activity carried on.*** *Accordingly, in my judgment, there is no basis in this case for a claim based on the tort of passing-off. The situation is simply that a non-commercial activity- a political party- is seeking to use the same name, the same initials, as a very small other such party with, so we are told, somewhat similar values and ideals. It does not provide a situation, in my judgment, in which there is any basis for contending that a tort has occurred, and in those circumstances in my judgment the learned judge was perfectly right to refuse an injunction ...* ***He must show that wrong has been done if a remedy is to be found*** *and, in my judgment,* ***on the basis of the facts that he has put before us,*** *no wrong has been done and therefore not surprisingly there is no remedy that the Court can offer him for the hurt which he says he has suffered."*

If I have set out, as fully as I have done above, the reasons for dismissing the appeal in the case of Kean v McGiven, it is simply to show that the learned judge did not in that case depart from the general principles of passing-off actions in his judgment, nor did he state that political parties, if they are able to establish that a wrong has been done to them or is likely to be done to them in their 'trade' "in the widest possible interpretation of that word" that is to say, in their "commercial activity" (if they are able to establish that they have any) in which **"the public will be led to associate the defendant's activities,"** would not be protected by the Courts applying the general principles of the tort of passing-off. Nor can it be said, in my judgment, that the case of Kean v McGivan sets out any general principles upon which one can argue that a political party, or for that matter a religious or charitable organisation, cannot bring a passing-off action in order to protect its name and associated commercial activity or goodwill. That case merely turns on its own facts and can be clearly distinguished from the present case, if it has to be, but it does not, as our Courts are not bound by decisions of the English Courts, anymore than they are bound by the decisions of any other Courts other than our own Court of Appeal. It does not follow from that, that we cannot be persuaded by authorities from outside our own jurisdiction, particularly when they emanate from such august bodies as the English Court of Appeal,

the House of Lords or the Privy Council, or equivalent Courts from the Commonwealth or elsewhere. In the present case, the question that must be answered is: can a religious and or charitable organisation bring an action in passing-off in Vanuatu in order to protect its goodwill and or commercial activities here from being damaged by another organisation seeking to use its name or a very similar name, in a manner that may and probably would be a misrepresentation to the public at large? Mrs Bothman Barlow, for the plaintiffs, relies in her helpful submissions on a number of cases which I found of assistance in this case and I will refer in my judgment to those that I consider more appropriate to this case.

Although it is often said that the action for passing-off may have been recognised at common law as long ago as in the time of the reign of Elizabeth 1: see the judgment of Doderidge J in Southern v How (1618) Poph143 at 144; the action developed mostly in the 19th century as one of commercial necessity, in order to protect the honest trader from the abuse by other traders, of the goodwill established by him in his business and thus affording him a cause of action when the public or other traders are led to believe, through misrepresentation, that the goods of the second trader is that of the first, which deception may lead to financial loss being caused to the honest trader. The Courts of Chancery did not hesitate in those circumstances to grant relief by way of injunctions. The principle was stated by Lord Lansdale in Perry v Truefitt (1842) 6 Beav. 66, 73 in this way:

> *"A man is not to sell his own goods under the pretence that they are the goods of another man; ..."*

Passing-off therefore, is an actionable wrong in which a **trader** so conducts his **business** as to lead to the belief that his goods or business are the goods or business of another. In Reddaway v Banham (1896) AC 199, 204; Halsbury L.C. said:

> *"The principle of law may be very simply stated, that nobody has any right to represent his goods as the goods of somebody else. How far the use of particular words, signs, or pictures does or does not come up to the proposition enunciated in each particular case must always be a question of evidence and the more simple the phraseology, the more like it is to a mere description of the article sold, the greater becomes the difficulty of proof; but if the proof establishes the fact, the legal consequences appear to follow".*

The Reddaway case was, like all other previous passing-off cases, instances where one trader was passing-off his own goods as those of another.

In Spalding v Gamage (1915) 84 L.J.Ch. 449, 450 Lord Parker said:

> *"I believe that the principle of law may be very simply stated, and that is, that nobody has any right to represent his goods as the goods of somebody else."*

But in that case Lord Parker went further and identified the right the invasion of which is the subject of passing-off actions as being the *"property in the business or goodwill likely*

to be injured by the misrepresentation". The significance of this case in the law of passing-off lay in the recognition by the Court that misrepresenting one's own goods as the goods of someone else was not a separate type of actionable wrong but merely one that was a part of a very wide category of actionable wrongs. It recognised for the first time that the goodwill of a business may well be injured by someone else who sells goods that are correctly described as being made by that manufacturer but being of an inferior class or quality are represented as goods of his manufacture of a superior class or quality. What became clear is that what the law protects by a passing-off action is a trader's **property in the goodwill of his business** which if damaged would be likely to lead to financial loss.

In Inland Revenue Commissioners v Muller & Co's Margarine Ltd [1901] AC 217, 223-224; Lord Macnaghten described goodwill in this way:

> *"It is the benefit and advantage of the good name, reputation, and connection of a business. It is the attractive force which brings it custom".*

In the case of Office Cleaning Services v Westminster Window, etc Cleaners Ltd (1946) 63 R.P.C. 39, 42; Lord Simons put it this way:

> *"The real question is the simple and familiar one: have the appellants proved that the use by the respondents of the trading style 'Office Cleaning Association' is calculated to lead to the belief that their business is the business of the appellants?".*

In the case of Bollinger v Costa Brava Wine Co [1961] 1 All E.R. 561 Danckwerts J saw no reasons why the scope of the action for passing-off should not be extended to include **a more general concept of unfair trading**. At page 567 he said:

> *"There is thus, in my view, a considerable body of evidence that persons whose life or education has not taught them much about the nature and production of wine, but who from time to time wish to purchase "Champagne", as the wine with the great reputation, are likely to be mislead by the description "Spanish Champagne"".*

Later at page 568 he said:

> *"It appears to me that when the plaintiffs have shown that a description used by the defendants contains an untruthful statement that a wine which is not champagne is champagne, they have gone some way in establishing their case, and the Court might require to be satisfied that such an untrue statement was so clearly qualified as to be not likely to mislead ... I am compelled to reach the conclusion that this is not an innocent case of passing-off. I think that Mr Crylls and his company intended by using the name "Spanish Champagne" to attract the goodwill connected with the reputation of "Champagne" to the Spanish product".*

It is also well established that proof of an intention to deceive is not essential: see per Lord Cairns L.C. in "Singer" Machine Manufacturers v Wilson (1877) 3 A.C. 376, 391. It seems that it is enough to found the action that the false representation *"has in fact been made, whether fraudulently or otherwise, and that damages may probably ensue ..."* per Lord Parker in Spalding v Gamage, supra.

In the case of Warnink v Townend & Sons (Hull) (1979) A.C. 731 at 742; in a decision of the House of Lords, Lord Diplock identified what he called: *"five characteristics which must be present in order to create a valid cause of action for passing-off:*

1) a misrepresentation
2) made by a trader in the course of trade
3) to prospective customers of his or ultimate consumers of goods or services supplied by him
4) which is calculated to injure the business or goodwill of another trader (in the sense that this is a reasonably foreseeable consequence) and
5) which causes actual damage to a business or goodwill of a trader by whom the action is brought or (in a quia timet action) will probably do so."

Therefore a passing-off action is now recognised as being a remedy for the invasion of a right of property, the property being in **the business or goodwill likely to be injured** by the misrepresentation rather than in the mark, name or get-up improperly used. Generally speaking, passing-off actions concern business or trading activities, so that actions by non-traders for misrepresentations damaging to them do not in general fall within the scope of passing-off. See: Day v Browning (1878) 10 Ch D 294 where the Court of Appeal in England held that there could be no action by a private individual to prevent a neighbour adopting the same name for his house; or the case of Earl Cowley v Countess Cowley [1901] A.C. 450 HL where the House of Lords refused an order to restrain the former wife of a peer from using her title after her remarriage to a third party. But the word "trade" or "trader" has now come to have a very wide meaning and persons involved in professional, literary and artistic occupations have been included. The protection has also been extended to charitable and quasi-charitable organisations, (whether incorporated or unincorporated) including churches and precedents abound around the world. See: Brighton College v Marriott [1926] A.C. 192; where a public school, incorporated under the Companies Acts as a company limited by guarantee, the principle object of the company being to provide thereby a general education in conformity with the doctrines of the Church of England, a charitable object. The Court held, nevertheless, that in providing education for money the school was also carrying on a trade. At page 204 Lord Blanesburgh said:

> *"Whether in any particular case activities which may properly be described as charitable have become trading or commercial must always be a question of fact- one important consideration being whether these activities are being conducted with commercial considerations in view and on commercial principles".*

And it appears that where the defendant's activities are of a commercial nature the courts are less strict in interpreting the requirement that the plaintiff must be a trader see: British Legion v British Legion Club (Street) Ltd (1931) 48 RPC 555; this was a case where Farwell J granted injunctions restraining the defendant from using the words "British Legion" in its title. The British Legion, that is the plaintiff, was first a voluntary association formed after the First World War to inaugurate and obtain democratic comradeship among those who had served in the War and to make provision for their welfare and that of their dependants; and in 1925 a Royal Charter was granted and the incorporated body took over the organisation and property of the association. That was an example of a case where a benevolent association obtained relief; (at 562) his Lordship rejected an argument which seemed to contend that relief was not available because it was not until 1925 that the plaintiff became a legal entity capable of bringing an action in its name. Farwell J pointed out that notwithstanding that, there was an association of persons from years earlier which had become well known all over the United Kingdom and he went on to say:

> *"It is a fallacy to say that that association could not have prevented the Defendant Company, if it was proved that there was serious risk of damage to the association, registering the name of the Defendant Company, or that prior to 1925 the persons forming that association could not have sued for the relief which is sought in this action".*

Another example would be the case of Re Dr Barnado's Homes, National Incorporated Association v Barnado Amalgamated Industries Ltd & Bernardoubt (1949) 66 RPC 103; in that case the plaintiffs were a charity who published and distributed large quantities of printed matter in connection with their charitable activities. The defendants were publishers of novelettes, and marked their goods "A Barnado Publication". The plaintiffs sued to restrain the defendants from using the name "Barnado" in such a manner as to lead to the belief that their business or publications were in any way connected with the plaintiffs: Vaisey J held that confusion between the plaintiffs' and defendants' activities was likely and an interlocutory injunction granted ex parte should be continued till judgment or further order. Plainly in that case it was thought that the activities of the plaintiffs (though not strictly "a trade") were nevertheless sufficiently analogous to that of "a trade" and that they had a sufficient commercial value in their name as to entitle them to apply for the court's protection against the abuse of their goodwill by the defendants who were themselves undoubtedly a commercial enterprise. It is clear that members of the public, more than likely, would have been misled into believing that they were contributing to a reputable charity when purchasing books that had nothing to do with that charity. Nor would the charity have had any control over the quality and content of the publications of the defendants, which conceivably could cause great damage to their reputation in the eyes of the general public. This in turn would, foreseeably, lead to the plaintiffs suffering pecuniary loss in their business as a charity.

American authorities are, (as can be expected in the world's largest consumer society) as trenchant on the subject matter, if not more, than the English Courts. As long ago as 1944 in Purcell v Summers 145 2nd 979 (1944) at 985 Parker J said:

> *"We have no doubt that these principles ordinarily applied in the case of business and trading corporations are equally applicable in the case of churches and other religious charitable organisations; for, while such organisations exist for the worship of Almighty God and for the purpose of benefiting mankind and not for purposes of profit, they are nevertheless dependent upon the contributions of their members for means to carry on their work, and anything which tends to divert membership or gifts of members from them injures them with respect to their financial condition in the same way that a business corporation is injured by diversion of trade or custom".*

In American Gold Star Mothers Inc v National Gold Star Mothers Inc 191 F 2nd 488 (1951) at 489, Bazelon J adopting Parker J's approach in Purcell v Summers recognised that:

> *"Source, reputation, and goodwill are as important to eleemosynary institutions as they are to business organisations".*

And in Jandron v Zuendel 139 F Supp 887 (1955) Jones CJ (at 889) in a case where the Church of Christ Scientist in Boston, Massachusetts was granted an injunction preventing members of the Third Church of Christ Scientist in Akron, Ohio using the term "Church of Christ, Scientist" or any variant thereof so similar as to cause confusion in minds of the public, applied Purcell v Summers, which he regarded as *"dispositive of this question".*

These American cases are not so very different from the decisions of the English courts in, for example, the case of British Legion v British Legion Club (Street) Ltd (1931) 48 RPC 555; and Dr Barnado's home: National Incorporated Association v Barnado Amalgamated Industries Ltd (1949) 66 RPC 103, to which I have made reference above.

This line of authorities was also followed in Australia by the Court of Appeal of New South Wales in the case of Holy Apostolic & Catholic Church of the East (Assyrian) Australia new South Wales Parish Association and others v Attorney-General (new South Wales) (1990) 18 NSWLR 291. That case involved a dispute between two groups of members in Sydney of the Holy Apostolic and Catholic Church of the East, involving differences not in liturgical principles, but in the manner of it hierarchical government, and breaches of a trust upon which land was held. A case very similar to the present case that I have to rule upon. The New South Wales Court of Appeal, dismissing the defendants appeal, followed the authorities referred to above and concluded that the learned trial judge was right and that the respondent was entitled to the remedies that he had obtained. The learned trial judge in that case had held at first instance that:

"As a matter of general principle, I cannot see any reasons why a religious organisation should not have the same protection as to the goodwill in its name as is afforded by the law to commercial organisations. Surely while religious organisations may not have ordinary commercial goodwill, they have something closely analogous thereto in that their reputation will be damaged by people falsely ascribing as an adjunct to them the organisation which is holding itself out by a deceptively similar name".

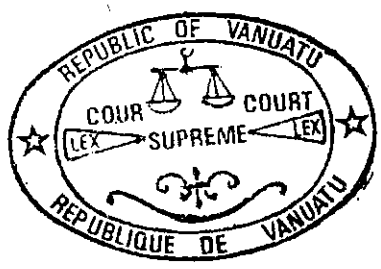
And the NSW Court of Appeal agreed with him.

The decision of the NSW Court of Appeal above was followed in a later English decision by Robert Walker J in the case of British Diabetic Association v Diabetic Society Ltd and others [1995] 4 All ER 812, sitting at first instance in the Chancery Division of the High Court. The brief facts of that case were that the plaintiff association established in 1934 as an unincorporated charity under the name of "Diabetic Association" was later incorporated and in 1954 changed its name to the 'British Diabetic Association". It developed into a national organisation raising several million pounds of income annually from donations and legacies from members of the public, which went to the benefit of its work concerning those who suffer from diabetes. The plaintiffs had expelled the defendants from its organisation following criticism by them concerning the manner in which the plaintiff charity was managed. The second and third defendants went on to form the defendant company. It was clear from the facts that the second and third defendants were dedicated to the cause of the diabetics and acted entirely selflessly in advancing their interest. The learned judge having expressed his concern in the necessity of such an action in the case before him then went on to try the issues. He found (at 819) that the plaintiff:

*"is not, in the ordinary sense, a trader (though it has a trading subsidiary, and it distributes its general periodicals, Balance, to members as part of what they get for their subscriptions). The society (*defendants*) is even less a trader and although the essentials of passing-off may be formulated (as in the speech of Lord Diplock) in terms that require both parties to a passing-off action to be traders, it is clear from the authorities that here the concept of trade is much wider than in (for instance) a tax context. Trade and professional associations have frequently succeeded in passing-off actions, as have the British Legion and Dr Barnado's Homes in actions against commercial organisations".*

Later at page 820 the learned judge concludes:

"the scope of passing-off actions is wide enough to include deception of the public by one fund-raising charity in a way that tends to appropriate and so damage another fund-raising charity's goodwill- that is, the other charity's 'attractive force' ... in obtaining financial support from the public".



Finally the clock had come full circle, and the Courts, it seems, in England, Australia and America have recognised the necessity to afford the Courts' protection to charitable organisations that did not necessarily or entirely fall within, if I may respectfully say so, the rather restricted essentials of passing-off actions formulated by Lord Diplock in the case of Erven Warnink BV v J Townend & Sons (Hull) Ltd [1979] 2 All ER 927 at 932, already referred to above.

I appreciate, of course, that none of the authorities that I have mentioned above are binding on my Court. But they are of such weight and authority that I cannot bring myself to ignore them. They also lend themselves well to the facts of the present case before me. The plaintiffs here are not only a church, but a reputable world-wide organisation involved in extensive charitable work that benefit vast numbers of people, both in this country and abroad. They have invested their time and money in charitable enterprises that have benefited and that continue to benefit Vanuatu, as disclosed in the affidavits of Pastor Wright and Pastor Townend. The defendants on the other hand, are seeking to break away from the mother organisation and seek to use the plaintiff's name or a very close resemblance of it, the only purpose of which, surely, is to benefit from the considerable goodwill and attractive (commercial) force in the name of the plaintiff church. This in my view, would mislead the public into believing that they are one and the same organisation. This, if allowed may (and probably will) draw away from the plaintiff, financial resources that would normally have gone to them as a result of their reputation and goodwill, and this, in my opinion, can foreseeably cause damage to the goodwill built up in Vanuatu (and elsewhere) by the plaintiff association. It may result, for instance, in the mother organisation world-wide withdrawing its help and assistance to Vanuatu. For my part, I see no reason why this type of situation cannot be prevented, by the Court of this country affording its protection to such parties as the plaintiff church, in an action for passing-off, and granting the declarations and injunction sought by the plaintiffs against the defendants. Plainly this case is a case which is closely analogous to a trading situation and warrants the court's intervention in the manner that I have indicated. I am, therefore, persuaded to that view by the above mentioned authorities and see no reasons why they should not be adopted and followed in Vanuatu. Like the learned judges in the case of Holy Apostolic & Catholic Church supra, I see no reason why *"an element essentially indistinguishable from commercial goodwill should not be attributed to a charitable organisation and be equally entitled to protection from the law".* As I have indicated before, the case of Kean v McGivan [1982] FSR 119 can easily be and is distinguished here on the basis that, in my respectful opinion, that case turns on its own facts, for the reasons that I have given above. Nevertheless, for myself I cannot see how a political party could be entitled to the protection of its name, unless it can, by evidence, bring itself within the ambit of cases that can be afforded the protection of the law because it has a commercial goodwill to protect. The common law, and the law of passing-off, does not afford the protection of the Courts to names, and there is a long line of authority to that effect. What the line of authorities that I have referred to above clearly establish is that there must be something more akin to "commercial goodwill" before the Courts will interfere. In the present case before me, I am satisfied that that has been established by the present plaintiffs and I so rule.

Therefore:

1. I declare that the plaintiff church is the true Seventh Day Adventist Church in Vanuatu.

2. The defendants and any of them are hereby restrained from using the plaintiff's name, whether it be Seventh-Day Adventist Church, SDA Church or Seventh-Day Church, and or any similar variation thereof, in perpetuity.

3. The defendants shall pay the plaintiff's costs; such costs to be taxed or agreed.

DELIVERED THIS 19th DAY OF SEPTEMBER 1996

CHARLES VAUDIN d'IMECOURT
Chief Justice

REPUBLIC OF VANUATU
COUR SUPREME COURT
LEX LEX
REPUBLIQUE DE VANUATU