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of opinion that there is no uncertainty : see *Grimond* v. *Grimond* (1), Lord *Halsbury's* judgment ; *In re Clarke* (2), and cases there cited ; and *In re Conn* ; *Conn* v. *Burns* (3). It is in no sense the purport of the gift to commit to others the task of making his will for the testator.

I am of opinion that the appeal must be dismissed.

ISAACS AND RICH JJ. This appeal involves the validity of three testamentary gifts—two of income and the third of corpus. They are attacked for uncertainty. *Harvey* J. held them all good.

The objection as to the two gifts of income was not pressed, and they are not open to any real doubt. The question as to corpus is more difficult. The objection taken to it is that the discretion given to the executive committee is so wide as to be beyond the power of a Court to control and therefore you cannot class it as a trust. The will is so worded as to require careful consideration of all its parts, in order to see what the testator meant by the provision with which this case is immediately concerned.

The testator must be taken to have known the constitution and objects of the Socialist Labour Party of Australia. It has upwards of a hundred members, it has a secretary and an executive committee.

Reading the provision as to corpus in its setting—that is, with reference to the gifts of income, and the substitutionary gifts, and the direction as to inspection during the lives of the life tenants—it appears clearly that there is no uncertainty as to property, or as to objects in the sense of the persons to be benefited. The objects are what the testator calls the Socialist Labour Party of Australia. They are unincorporated, and the executive committee are official managers of the affairs of the Party, subject only to the control of the annual conference or a meeting of the financial members.

The only doubt that can arise is as to the " purposes and objects " to which the property is to be applied, and in the result the decision must turn on what the testator meant by the words " purposes and objects."

(1) (1905) A.C., 124. (2) (1901) 2 Ch., 110.
(3) (1898) 1 Ir. Rep., 337.

In *Bathurst* v. *Errington* (1) Lord *Cairns* said: "In construing the will of the testator . . . it is necessary that we should put ourselves, as far as we can, in the position of the testator, and interpret his expressions as to persons and things with reference to that degree of knowledge of those persons and things which, so far as we can discover, the testator possessed."

Applying this rule, the intention of the testator is sufficiently plain. He was well acquainted with the Socialist Labour Party, he knew its "objects," and therefore its constitution; he refers to the rules, and so he knew what are called in its constitution and rules its "methods," which, as set out, may not improperly be called its "purposes" so far as purposes are not included in "objects"; he knew it had a secretary and an executive committee, and the functions of that committee. He obviously intended to benefit that society, which is called a Party and consists of recognized members but unincorporated, and fluctuating in personnel.

His will beyond question indicates that if the declared "objects" of the Party as set out in its constitution were to be substantially altered at the time he died, his gift should go in another direction. Consequently, those were the "objects" he meant to promote, and he did not intend to promote, and expressly refused to promote, any object substantially differing. Therefore it cannot be supposed that he was so inconsistent as to alter his gift if the society altered its objects, and yet expressly permit the executive to apply the gift to altered objects for the same society.

Then, on the death of the life tenants, the real estate is devised to the general secretary for the time being, upon trust to sell and pay the proceeds to "the executive committee for the time being in Sydney of the said Party." That is, the trust (which is the only thing called by him a "trust" in relation to the corpus) was to pay to the executive committee, not for their own benefit, but clearly as the official representatives of the Party. He did not mean that they were to receive the moneys as private individuals; or that he personally selected them; he deliberately allowed the society to select whom they pleased; the payment was to be to persons in whom, not he, but the Party had confidence. They took as official

(1) 2 App. Cas., 698, at p. 706.

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representatives rather than trustees, unless their powers under the will were wider than their duties to the Party. He did not refer to them as trustees. No doubt in a sense they take as trustees, but that is because they are bound to account to the Party whose executive committee they are, for the moneys they receive.

It would have been practically impossible to hand the money to the Party, a fairly numerous body, not incorporated. We can therefore well understand why the committee were selected by the testator as the manual recipients on behalf of the society. Then what are they to do with it? The will says "for such purposes and objects as the said executive may think fit in the interests of the said Party."

Remembering that the "Party" is a definite society of which each member is identifiable, that the testator insisted on the substantial retention of its declared "objects," and that he knew the relation of the executive committee to the general body, we conclude that the "objects and purposes" from which he permitted the committee to select were the "objects and methods" in the constitution.

Thus the ambit of discretion is limited to the "objects and purposes" of the society itself. These are wide, but have some limits. At all events, the provision does not leave the executive committee for the time being to arbitrarily choose any "object or purpose" it likes.

The test of uncertainty which will vitiate in such a case is laid down in *Grimond* v. *Grimond* (1). There Lord *Halsbury* L.C. said the question was whether the testator had "left his directions so vague that it is in effect giving someone else power to make a will for him instead of making a will for himself." In saying that, the learned Lord was summarizing the effect of the previous authorities. In *Doe d. Winter* v. *Perrat* (2), in the House of Lords, Lord *Brougham* said: "The difficulty" (that is, the difficulty of construing the will so as to find sufficient certainty) "must be so great that it amounts to an impossibility." And in *In re Roberts*; *Reppington* v. *Roberts-Gawen* (3) *Jessel* M.R. said: "The modern doctrine is not to hold a will void for uncertainty unless it is utterly impossible to put a

(1) (1905) A.C., 124, at p. 126.
(2) 6 M. & G., 314, at p. 361.
(3) 19 Ch. D., 520, at p. 529.

meaning upon it. The duty of the Court is to put a fair meaning on the terms used, and not, as was said in one case, to repose on the easy pillow of saying that the whole is void for uncertainty."

On the whole, we do not think that can be said of the present will; and we come to the conclusion that, broadly phrased as this gift of corpus is, the testator has sufficiently indicated that the Party is the object of his bounty, first, as to part of the income and, next, as to corpus, and that the executive committee for the time being are to hold only as the official representatives of the Party who are to be regarded as the real beneficiaries and owners of the fund, and to whom the committee is always bound to account. The case of *In re Clarke*; *Clarke* v. *Clarke* (1)—as to which see particularly the comments at p. 117 on the case of *In re Clark's Trust* (2)—and *Conn's Case* (3) are greatly in favour of the respondent's contention.

The judgment of *Harvey* J. was therefore right, and this appeal should be dismissed.

Appeal dismissed. Plaintiff to be at liberty to retain her costs out of the estate and to pay the costs of the other parties of this appeal out of the estate as between solicitor and client.

Solicitors, *Crichton Smith & Waring.*

B. L.

(1) (1901) 2 Ch., 110.
(2) 1 Ch. D., 497.
(3) (1898) 1 Ir. R., 337.

[HIGH COURT OF AUSTRALIA.]

PEARCE . . . . . APPELLANT;
DEFENDANT,

AND

JONES . . . . . RESPONDENT.
INFORMANT,

SMITH . . . . . APPELLANT;
DEFENDANT,

AND

JONES . . . . . RESPONDENT.
INFORMANT,

ON APPEAL FROM A COURT OF PETTY SESSIONS OF VICTORIA.

H. C. OF A. 1917.

MELBOURNE, *Sept.* 24.

Barton, Isaacs and Gavan Duffy JJ.

War Precautions—Regulations—Offence—Making statement prejudicial to recruiting—Seconder of resolution at meeting—Putting of resolution to meeting by chairman—War Precautions Regulations 1915, *reg.* 28 (*Statutory Rules* 1915, *No.* 130—*Statutory Rules* 1916, *No.* 159).

Reg. 28 of the *War Precautions Regulations* 1915 provides, so far as is material, that no person shall, by word of mouth, "(*b*) make statements likely to prejudice the recruiting of any of His Majesty's Forces," and that "if any person contravenes this regulation, he shall be guilty of an offence against" the *War Precautions Act*.

Held, that a person who, at a meeting, seconds a resolution which contains such a statement is, equally with the mover, guilty of the offence, but that a person who as chairman of a meeting merely puts such a resolution to the vote of the meeting is not guilty of the offence.

At a meeting of the Trades Hall Council a motion was proposed and seconded, and put to the meeting by the chairman, that in the opinion of the Council the Executive of the Political Labour Council should call upon all Labour Members of Parliament to refuse to assist in recruiting.

Held, that the motion was a statement likely to prejudice the recruiting of His Majesty's Forces within reg. 28 (*b*) of the *War Precautions Regulations* 1915.

APPEALS from a Court of Petty Sessions of Victoria.

In the Court of Petty Sessions at Melbourne, before a Police Magistrate, two informations were heard whereby William Percival Jones charged that Alfred John Pearce, in the one case, and William Smith, in the other, did, contrary to the *War Precautions Regulations* 1915, "by word of mouth make statements likely to prejudice the recruiting of His Majesty's Forces." Evidence was given that at a meeting of the Trades Hall Council in Melbourne a resolution was moved which was as follows: "That in the opinion of this Council, the Political Labour Council Executive should call upon all Labour Members of Parliament to refuse to assist in recruiting"; that the resolution was seconded by the defendant Smith, and that it was put to the meeting by the defendant Pearce, who was the chairman of the meeting, and was carried. The Magistrate convicted both the defendants, and each of them appealed to the High Court by way of order to review on the grounds (*inter alia*), (1) that there was no evidence that either of the defendants by word of mouth made any statement; (2) that there was no evidence that either of the defendants made any statement likely to prejudice the recruiting of His Majesty's Forces within the meaning of reg. 28; (3) that the Magistrate was wrong in determining that either to second the resolution in question or to put it to the meeting was an offence within the meaning of reg. 28; and (4) that certain evidence was wrongly admitted.

The two appeals were heard together.

Starke (with him *Foster*), for the appellants. The resolution in its terms is not likely to prejudice recruiting within the meaning of reg. 28 (*b*). To come within the regulation there must be something in the statement which is likely to deter persons from enlisting, and