[HIGH COURT OF AUSTRALIA.]

HARDEY . . . . . APPELLANT;
DEFENDANT,

AND

TORY AND OTHERS . . . . . RESPONDENTS.
PLAINTIFFS,

ON APPEAL FROM THE SUPREME COURT OF WESTERN AUSTRALIA.

H. C. OF A. 1923.

PERTH, *Aug.* 13, 14.

Knox C.J., Higgins and Starke JJ.

Will—Charitable bequest—Gift to secretaries of charitable societies—Gift for charitable purposes.

By his will a testator directed his trustees to stand possessed of certain moneys upon trust "to pay over the same into the hands of the secretaries for the time being of the Wesleyan Missionary Society in London."

Held, that the gift to the secretaries of the Society was for the purposes of the Society; and, as those purposes were known to the law as charitable purposes, the gift was valid.

Per Higgins J.: Where a gift is made to a society having a distinctive charitable purpose, prima facie the gift is for that purpose.

Decision of the Supreme Court of Western Australia (*McMillan* C.J.) affirmed.

APPEAL from the Supreme Court of Western Australia.

Joseph Hardey, who died at Perth on 6th September 1875, by his will (*inter alia*) directed his trustees to stand possessed of certain moneys upon trust to pay or divide one-fifth part thereof to or amongst children of his daughters living at the death of the survivor of those daughters; and the will proceeded: "I direct my trustee or trustees shall stand possessed of the remainder of the amount" of such moneys "upon trust to pay one-half part thereof

into the hands of the trustees for the time being of the Wesleyan Methodist Society at Perth to be by them invested in the purchase of houses or land and to be held by such trustees upon the trusts of a certain deed . . . and to the use of the Wesleyan Methodist cause within the colony for the maintenance of such of the ministers of the Wesleyan Connexion as shall in the opinion of the District Meeting for the time being of that body most need help And as to the other half part of the said trust moneys to pay over the same into the hands of the secretaries for the time being of the Wesleyan Missionary Society in London " And in the event of there being no such children of daughters as above referred to " then I direct my said trustees or trustee shall stand possessed of the share to which such children . . . would have been entitled under this my will . . . upon trust to divide and pay the same equally among and to the trustees of the Wesleyan Methodist Society at Perth and the secretaries for the time being of the Wesleyan Methodist Society in London to be by them held upon and for the like trusts intents and purposes as are hereinbefore declared of and concerning the shares hereinbefore directed to be paid to them respectively." The testator's daughters had died without leaving children.

Frank Bertram Tory, one of the trustees, applied, on originating summons to the Supreme Court, for the determination of (*inter alia*) the following questions arising out of the administration of the trusts under the will:—(1) Is the following bequest under the said will to the secretaries for the time being of the Wesleyan Methodist Missionary Society in London (referred to in the said will as the " Wesleyan Missionary Society in London ") a valid bequest, namely, " As to the other half part of the said trust moneys to pay over the same into the hands of the secretaries for the time being of the Wesleyan Missionary Society in London "? (2) Is the following bequest under the said will to the same Society a valid bequest, namely, " Upon trust to divide and pay the same equally among and to the trustees of the Wesleyan Methodist Society at Perth and the secretaries for the time being of the Wesleyan Missionary Society in London to be by them held upon and for the like trusts intents and purposes as are hereinbefore declared of and concerning the shares hereinbefore directed to be paid to them respectively "?

H. C. OF A. 1923.

HARDEY v. TORY.

The application was heard by *McMillan* C.J., who answered the questions in the affirmative.

Against this decision Hubert Richard Lowe Hardey (a grandson of the testator, and one of the defendants to the originating summons) appealed to the High Court.

Downing K.C. (with him *Walker*), for the appellant. (1) The moneys included in either bequest were not intended to be paid to the Society for its own purposes, but only to the secretaries for the time being upon trusts too indefinite to be carried into effect. (2) There is no general charitable intention disclosed in the will. (3) If, however, a general charitable intention is disclosed, the *cy-près* doctrine cannot be applied, because the secretaries of the Societies are outside the jurisdiction of this Court. For these reasons the next-of-kin are entitled. The trustees were not to take these bequests for their own use, but "to the use of the Wesleyan Methodist cause." This is meaningless. There is a difference between "paying to" and "paying into the hands of"—it is not "for the purposes of the Society," nor is it "for the secretaries personally" (*Fell* v. *Fell* (1)).

[KNOX C.J. referred to *Halsbury's Laws of England*, vol. IV., pp. 114, 121.]

There is no doubt that if the words were "for the purposes of the Society" it would be a good charitable gift. No purpose has been declared unless the purpose is read in by implication.

Sir Walter James K.C. and *F. Leake*, for the respondents Burnett (the secretary of the Wesleyan Methodist Missionary Society in London) and the Wesleyan Methodist Missionary Society in London, and *Stow*, for the respondent Tory, were not called on.

KNOX C.J. In this case we are all of opinion that the gift in these words, "And as to the other half part of the said trust moneys to pay over the same into the hands of the secretaries for the time being of the Wesleyan Missionary Society in London," is a gift to the secretaries of the Society for the purposes of the Society, and

(1) (1922) 31 C.L.R., 268.

those purposes are admitted to be what are known to the law as charitable purposes. That being so, no difficulty is raised as to the later gift of the one-fifth residue, which was given on the trusts and purposes declared. For these reasons we think the decision of the Chief Justice of Western Australia is correct, and that this appeal should be dismissed with costs.

HIGGINS J. I want to say simply—concurring with the Chief Justice and my learned brother—that, where a gift is made to a society having a distinctive charitable purpose, prima facie the gift is for that purpose. It is quite true that no trust is created unless the object as well as the subject of the gift is defined. The gift to the Wesleyan Missionary Society is prima facie to the objects of that Society, and there is nothing in the will to contradict or qualify that prima facie meaning. A book has been exhibited showing the objects of this Society.

STARKE J. I concur.

Appeal dismissed with costs.

Solicitor for the appellant, *J. L. Walker.*

Solicitors for the respondents, *Stone, James & Co.*