

[HIGH COURT OF AUSTRALIA.]

THE ROYAL NORTH SHORE HOSPITAL  
OF SYDNEY . . . . .

DEFENDANT,

} APPELLANT;

AND

THE ATTORNEY-GENERAL FOR NEW  
SOUTH WALES AND OTHERS . . .

DEFENDANTS AND PLAINTIFF,

} RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF  
NEW SOUTH WALES.

H. C. OF A.
1938.

SYDNEY,  
April 29;  
May 2-4;  
Aug. 19.

Latham C.J.,  
Rich, Starke  
and Dixon JJ.

*Charities—Extension of technical education in State schools—Bequest for essay—Refusal of specified agent to administer bequest—Failure of bequest—General charitable intention—Scheme propounded by testator—Practicability—Directions to accumulate income—Cy-près.*

A testator directed that the residue of his estate should be invested and that, after the death of the life tenant named in the will, the income thereof should be applied for the perpetuation of an award to be competed for in the form of an essay in every second year. The testator then stated that the objects of the bequest and the purpose of the essay were to popularize and promote the principles he had always advocated in his published works, namely, the adoption of measures to prevent deaths of infants, the improvement of Australian food habits and the extension of the teaching of technical education in State schools. The testator directed that the bequest should be administered by a specified society and that from the money available for the bequest a stated sum should be paid to the society for purposes of the society. He further directed that one-third of the income arising from the residuary trust fund should be accumulated and added to the corpus of the trust fund. The life tenant died more than twenty-one years after the death of the testator. The society declined to administer the bequest.

*Held:—*

(1) That the extension of the teaching of technical education in State schools was a valid charitable object and the bequest was not void as being a trust for the attainment of a political object.



(2) That the refusal of the society to administer the bequest resulted in a failure of the essay competition but not of the bequest, which should be applied *cy-près*.

H. C. OF A.  
1938.

(3) That as the society refused to administer the bequest the gift to the society failed and its subject matter remained part of the charitable fund.

ROYAL  
NORTH  
SHORE  
HOSPITAL  
OF SYDNEY  
v.  
ATTORNEY-  
GENERAL  
(N.S.W.).

(4) That the moneys directed to be accumulated did not pass as upon an intestacy but should be applied for the purpose of the charity under a *cy-près* scheme.

Decision of the Supreme Court of New South Wales (*Nicholas J.*): *Perpetual Trustee Co. Ltd. v. Sydney Mechanics School of Arts*, (1937) 38 S.R. (N.S.W.) 22; 55 W.N. (N.S.W.) 43, affirmed subject to variations.

APPEAL from the Supreme Court of New South Wales.

By his will dated 22nd October 1903, the testator, Philip Edward Muskett, a medical practitioner, who died on 25th August 1909, provided that his sister, Alice Jane Muskett, should receive the net income of his estate during her life and, after making provision for certain "annual charitable donations" after her death, the testator then made provision for "The Philip Muskett Biennial Bequest" in the following terms:—"my trustee shall in the next place set aside out of my trust property the further sum of one thousand pounds to be administered under the designation of the 'notification fund' and shall invest the same and apply the income derived therefrom in payment of the charges for advertisement to be inserted as hereinafter mentioned in the principal metropolitan newspapers of the Commonwealth of Australia and New Zealand explaining the purpose and conditions of 'The Philip Muskett Biennial Bequest' hereinafter more particularly referred to and I direct that such advertisements be inserted during the last week of each year and continued in the first week of each new year then following and I authorize and empower my trustee to entrust the insertion of these notifications to the committee for the time being of the Sydney Mechanics' School of Arts and to make the necessary payments in that behalf to the treasurer or other proper officer for the time being of the said Sydney Mechanics' School of Arts I direct my trustee out of the corpus of my trust estate to supplement the income arising from the said . . . sum of one thousand pounds by the addition thereto at the end of the first year from the appropriation thereof of the sum of one pound at the end of the second year of the sum of



H. C. OF A.  
1938.

ROYAL  
NORTH  
SHORE  
HOSPITAL  
OF SYDNEY  
v.  
ATTORNEY-  
GENERAL  
(N.S.W.).

two pounds at the end of the third year of the sum of three pounds and so on in arithmetical progression at the end of each year, but so that when the maximum of one hundred pounds is reached made up of income and the annual accretions aforesaid the amount available for the purposes of the notification fund in each year thereafter shall be kept at the level of one hundred pounds And I further declare that my trustee after providing for the said 'annual charitable donations' and the 'notification fund' shall stand possessed of the then residue of my trust estate (hereinafter referred to as 'my residuary trust fund') upon trust to invest the same and to apply the income in manner hereinafter mentioned for the perpetuation of an award to be termed 'The Philip Muskett Biennial Bequest' I direct my trustee to accumulate one-third of the annual income arising from my residuary trust fund at compound interest to the intent that such accumulations shall be added to the corpus of my residuary trust fund and become part thereof And as to the other two-thirds of the annual income arising from my residuary trust fund and the accumulations aforesaid my trustee shall devote the same to the purposes of and incident to the said award as hereinafter set forth And I declare that the following conditions shall be observed with respect to the conduct and management of the said award:—1. Subject to the special provision of clause 10 of these conditions 'The Philip Musket Biennial Bequest' shall be administered by the committee for the time being of the Sydney Mechanics' School of Arts. 2. 'The Philip Muskett Biennial Bequest' shall be competed for in the form of an essay in every second year after the year of my death or after the year of the death of my said sister (as the case may be) and such competition shall be open to any person of Australasian birth or who shall have resided in any part of Australasia for more than half of his or her life but in order to prevent any possibility of discordance no person who is an office bearer or official of the Sydney Mechanics' School of Arts shall be eligible to compete for the purposes of these conditions the term 'Australasia' shall mean and include the States of the Commonwealth of Australia and the colonies of New Zealand and Fiji. 3. The objects of 'The Philip Muskett Biennial Bequest' and the purpose of the essay shall be to popularize and promote the principles which I have always



advocated in my published works writings or lectures, namely :—

(1) The adoption of measures to prevent the deaths of so many Australian infants. (2) The improvement of the Australian national food habits. (3) The extension of the teaching of technical education in State schools. The essay must not consist of more words than are contained in the first twenty chapters of Oliver Goldsmith's 'Vicar of Wakefield.' 4. Essays must be sent in so as to reach the secretary of the Sydney Mechanics' School of Arts on or before the thirty-first day of March in each year in which 'The Philip Muskett Biennial Bequest' shall be open for competition and each such essay shall be typewritten and shall be identified by a motto or nom-de-plume the writer's name not being disclosed until the award has been made. 5. The committee for the time being of the Sydney Mechanics' School of Arts shall make their award on or before the thirtieth day of June then next following and the winner shall read such extracts or parts of the prize essay as shall have first been approved of by the said committee in the lecture hall of the institution on the thirtieth day of September or as near thereto as such committee shall regard as practicable and convenient. No charge for admission shall be made on this occasion and the time occupied by the winner shall be limited to one hour and shall terminate not later than nine o'clock p.m. 6. In making their award the committee shall have paramount regard to the object of the establishment of 'The Philip Muskett Biennial Bequest' and subject to this primary desideratum, consideration shall be given to merit as shown in the following order of precedence :—(a) Literary excellence and style. (b) Confirmatory testimony of views held by bequestor. (c) Evidence of historical research into the causes which bring about national prosperity. (d) General proof of extensive reading. 7. No person shall be allowed to win the 'bequest' more than once and unless there be at least three competitors no award shall be made and in that event one-half of the amount available for the award for that year shall be capitalized and invested as part of my original residuary trust fund, and the other half shall be applied in assistance of the bequest for the following year. The bequest shall then be notified as open for competition for the year following according to the like conditions as herein set out. 8. The money available for 'The

H. C. OF A.

1938.

ROYAL  
NORTH  
SHORE  
HOSPITAL  
OF SYDNEY

v.

ATTORNEY-  
GENERAL  
(N.S.W.).



H. C. OF A.  
1938.

ROYAL  
NORTH  
SHORE  
HOSPITAL  
OF SYDNEY  
v.  
ATTORNEY-  
GENERAL  
(N.S.W.).  
—

Philip Muskett Biennial Bequest ' shall be apportioned in the following manner :—(1) To the Sydney Mechanics' School of Arts the sum of ten pounds half of which shall be devoted to the purchase of works of special utility for the reference library of the institution and the other half for the general purposes of the institution. (2) To defray the cost of the printing of the winning essay such sum as with the said sum of ten pounds shall not exceed one-third of the total amount of the bequest available for the particular year of award and such a number of copies shall be printed as will permit of a copy being forwarded to each of the principal newspapers throughout the Commonwealth and New Zealand and of one copy being distributed gratis to each member of the audience present at the reading of the winning essay. Copies for review by the newspapers aforesaid shall be posted so as to reach their destination before the thirtieth September. But I expressly empower the said committee or other the persons for the time being controlling the conduct of the bequest to modify the foregoing directions in regard to printing in so far as the amount available for the purpose of such printing shall be insufficient to provide for the probable cost of same. (3) The residue (consisting of at least two-thirds of the whole sum available for the purposes of the bequest for the particular year) shall be handed over by the president or some other prominent office bearer of the Sydney Mechanics' School of Arts to the winner on the conclusion of his or her reading of the prize essay on the night aforesaid. 9. Under the specially exceptional circumstances of critical or severe illness detention in travelling or the like the writer of the prize essay may be represented by a deputy on the reading thereof as provided by clause 5 of these conditions but such deputy must be provided with the written authority of the principal and with the consent of the committee to so represent him or her and to receive his or her prize money. In the event of such winner failing to attend in person (except with the consent of the committee as aforesaid) he or she shall thereby forfeit one-half of the award which sum shall be added to the corpus of my residuary trust fund and be dealt with accordingly by my trustee. 10. If in the opinion of my trustee there shall be a persistent and unmistakable demonstration of public dissatisfaction expressed in the columns of the



press with the administration of the committee of the Sydney Mechanics' School of Arts so far as 'The Philip Muskett Biennial Bequest' is concerned my trustee shall in its absolute discretion be empowered to request the president of the Sydney Chamber of Commerce and such other representative public men as my trustee shall think fit to administer the bequest for so long as in the judgment of my trustee may be necessary. But it is my desire that so soon as such necessary changes whether in the methods of administration or in the personnel of the committee have been made to the satisfaction of my trustee the committee for the time being of the said institution shall again be entrusted with the administration of the bequest. I empower my trustee with a view to avoiding litigation to refer any matter in difference relating to the administration of 'The Philip Muskett Biennial Bequest' to arbitration and generally to settle and determine all questions and disputes relating to my estate or the trusts of this my will in the same manner or in such way and on such terms as my trustee shall deem expedient . . . But I expressly declare by way of caution to my trustee and without in any way limiting or enlarging the foregoing investment clause that as it is my desire not only to keep intact the principal available for the purposes of 'The Philip Muskett Biennial Bequest' but also to steadily augment it by additions of income as hereinbefore provided investments shall only be made in or upon absolutely reliable securities the paramount consideration being safety."

Miss Alice Jane Muskett, the life tenant under the will of the testator and his sole next of kin, died on 7th July 1936. By her will she provided that if the board of directors of the Royal North Shore Hospital of Sydney, which is duly incorporated under that name, within twelve months after the date of her death gave to her trustee an undertaking in writing that the gift would be expended in research work, then the whole of her residuary estate should be given to that hospital. The board of directors duly gave the undertaking as required.

In February 1937 the testator's trustee was informed in writing by the secretary of the Sydney Mechanics' School of Arts that the committee thereof was not prepared to accept the duties in connection with the bequest in the event of the court deciding that the

H. C. OF A.  
1938.

ROYAL  
NORTH  
SHORE  
HOSPITAL  
OF SYDNEY  
v.  
ATTORNEY-  
GENERAL  
(N.S.W.).



H. C. OF A.  
1938.

ROYAL  
NORTH  
SHORE  
HOSPITAL  
OF SYDNEY

v.  
ATTORNEY-  
GENERAL  
(N.S.W.).

bequest was valid. The Sydney Mechanics' School of Arts is a body incorporated by an Act of Parliament assented to on 23rd October 1886. Its objects are described in sec. 2 of that Act as "the intellectual improvement of its members and the cultivation of literature, science and art."

The secretary of the Sydney Chamber of Commerce also intimated that that body was not prepared to administer the bequest on the terms outlined by the testator, and was not willing to commit itself to administer the bequest as may be directed by any subsequent order of the court.

The trustee of the testator's will took out an originating summons for the determination of, *inter alia*, the following questions:—(a) whether the trust to set aside the sum of £1,000, referred to as the "notification fund," was a valid trust; (b) whether the trust of the residuary estate called "The Philip Muskett Biennial Bequest" was a charitable trust; (c) if that bequest was a valid trust, whether it had failed by reason of the Sydney Mechanics' School of Arts and/or the committee thereof having refused to administer it or otherwise, and, if not, who was to administer the bequest; (d) whether the trust to establish the notification fund failed if the bequest was void or otherwise failed; (e) whether in the events which had happened the testator died intestate as to the beneficial interest in his residuary estate directed to be applied for the bequest; (f) whether the direction to supplement the income arising from the notification fund by the addition thereto of the sums of £1 and £2 at the end of the first and second years respectively, and so on in arithmetical progression at the end of each year, was a valid direction or was void as infringing the rule against accumulations or otherwise; (g) whether the bequest was invalid as infringing the rule against perpetuities or otherwise; (h) whether the direction to accumulate one-third of the annual income arising from the residuary trust fund was void as infringing the rule against accumulations or otherwise; (i) if the answer to question h should be in the affirmative whether the one-third of the annual income arising from the residuary trust fund passed to the testator's next of kin as on an intestacy; (j) whether the direction that in the event of no award being made in any year one-half of the amount available for the award for that



year should be capitalized was valid or was void as infringing the rule against accumulations or otherwise ; (*k*) whether the direction that in the event of no award being made in any year one-half of the amount available for the award in that year should be applied in assistance of the bequest for the following year was a valid direction or was void as infringing the rule against accumulations or otherwise ; (*l*) if the direction referred to in question *j* was void whether the amount directed to be capitalized passed to the testator's next of kin as on an intestacy ; (*m*) if the direction referred to in question *k* was void whether the amount directed to be applied in assistance of the bequest for the following year passed to the testator's next of kin as on an intestacy ; and (*n*) if the trust to accumulate for the purposes of the notification fund was void whether the moneys directed to be accumulated fell into and became part of the residuary trust fund or passed to the testator's next of kin as on an intestacy.

An application was made in the summons for an order that, if necessary, a scheme for the regulation and management of the charitable trust created by the bequest might be settled by the court or as it should direct.

The defendants to the summons were the Sydney Mechanics School of Arts, the Royal North Shore Hospital of Sydney, and the Attorney-General of and for the State of New South Wales. Each of the defendants entered a submitting appearance, but at the hearing of the summons there was not any appearance by or on behalf of the Sydney Mechanics School of Arts.

The summons was heard by *Nicholas J.*, who held that "The Philip Muskett Biennial Bequest" was a valid charitable trust ; that the will disclosed a general charitable intention ; and, therefore, that the gift had not failed by reason of the refusal of the Sydney Mechanics School of Arts to administer the bequest. His Honour answered questions *g*, *i*, *l*, *m* and *n* in the negative ; question *k*, that the direction was a valid direction ; and ordered that the question who was to administer the bequest, and questions *f*, *h* and *j* should stand over generally. He (*a*) directed an inquiry whether the nature of the principles of the testator contained in the third object of the trust could be ascertained from his published works

H. C. OF A.  
1938.

ROYAL  
NORTH  
SHORE  
HOSPITAL  
OF SYDNEY

*v.*  
ATTORNEY-  
GENERAL  
(N.S.W.).



H. C. OF A.  
1938.  
} ROYAL  
NORTH  
SHORE  
HOSPITAL  
OF SYDNEY  
v.  
ATTORNEY-  
GENERAL  
(N.S.W.).

or lectures, and whether any or all of those principles were contrary to public policy or morals, and gave certain directions relating to such inquiry; and (b) referred to the Master in Equity the matter of settling a scheme for the regulation and management of the charitable trust created by the bequest and for the application of the present and future income thereof: *Perpetual Trustee Co. Ltd. v. Sydney Mechanics School of Arts* (1).

From that decision the Royal North Shore Hospital of Sydney appealed to the High Court, the respondents to the appeal being the other defendants to the summons and the plaintiff thereto.

Although served with notice of the appeal there was not any appearance at the hearing by or on behalf of the respondent the Sydney Mechanics School of Arts.

*Maughan* K.C. (with him *Riley*), for the appellant. The object of "the extension of the teaching of technical education in State schools" is clearly non-charitable. It is a gift for the purpose of political propaganda and agitation merely to alter the policy of the government in a State department (*Bowman v. Secular Society Ltd.* (2); *Inland Revenue Commissioners v. Temperance Council of Christian Churches of England and Wales* (3); *In re Hood*; *Public Trustee v. Hood* (4)). Political objects are not charitable objects (*In re Jones*; *Public Trustee v. Earl of Clarendon* (5); *Tudor on Charities and Mortmain*, 5th ed. (1929) p. 142). A gift for the promotion of technical education may be charitable but it is not every gift that is concerned with technical education that is charitable (*Roman Catholic Archbishop of Melbourne v. Lawlor* (6)). As one of the objects is a non-charitable object the whole gift is bad (*In re Macduff*; *Macduff v. Macduff* (7); *Attorney-General for New South Wales v. Adams* (8)). Where a bequest can be applied for purposes not necessarily charitable the bequest is bad; the court cannot apportion (*Hunter v. Attorney-General* (9); *In re Tetley*; *National Provincial and Union Bank of England Ltd. v. Tetley* (10);

(1) (1937) 38 S.R. (N.S.W.) 22; 55 W.N. (N.S.W.) 43.

(2) (1917) A.C. 406, at pp. 441, 442.

(3) (1926) 42 T.L.R. 618; 136 L.T. 27.

(4) (1931) 1 Ch. 240.

(5) (1929) 45 T.L.R. 259.

(6) (1934) 51 C.L.R. 1, at pp. 30, 31, 33.

(7) (1896) 2 Ch. 451.

(8) (1908) 7 C.L.R. 100.

(9) (1899) A.C. 309, at p. 315.

(10) (1923) 1 Ch. 258, at pp. 261, 269, 271, 275.



*Morice v. Bishop of Durham* (1) ). In view of the decision in *Barby v. Perpetual Trustee Co. (Ltd.)* (2) it is not disputed that the first and second objects of the trust are charitable. The provisions of the will relating to the bequest disclose not a paramount general charitable intention but a particular charitable intention. It was an integral and essential part of the testator's scheme that it should be under the management of the committee of the Sydney Mechanics School of Arts (*In re Wilson* ; *Twentyman v. Simpson* (3) ). Unless there is a general charitable intention the court will not execute the trust *cy-près* (*Biscoe v. Jackson* (4) ; *In re Packe* ; *Sanders v. Attorney-General* (5) ; *In re Monk* ; *Giffen v. Wedd* (6) ). The construing of charitable trusts is regulated by principles different from those which apply in the case of private trusts (*Barby v. Perpetual Trustee Co. (Ltd.)* (7) ).

[DIXON J. referred to *Moggridge v. Thackwell* (8) ; *Mills v. Farmer* (9).]

The will discloses no purpose wider than the execution of the exact directions (*Barby's Case* (10) ), the objective or paramount idea being the promotion of an essay scheme to be carried out entirely and only by the committee of the Sydney Mechanics School of Arts, the subject of the essays to be certain principles as indicated by the testator. Thus this case is distinguishable from *Re Lawton* ; *Gartside v. Attorney-General* (11). If the gift fails or if there is a general charitable intention of a defined character which cannot be carried out there is an intestacy. The declaration contained in the decretal order is too widely expressed, which may operate to the prejudice of the appellant in the settlement of a scheme.

[DIXON J. referred to *Reeve v. Attorney-General* (12).]

The Master in Equity should not have been empowered to settle a scheme for the regulation and management of the bequest and for the application of the present and future income thereof. The court below should have declared which provisions in the will were

H. C. OF A.  
1938.  
ROYAL  
NORTH  
SHORE  
HOSPITAL  
OF SYDNEY  
v.  
ATTORNEY-  
GENERAL  
(N.S.W.).

(1) (1805) 10 Ves. 522 ; 32 E.R. 947.

(2) (1937) 58 C.L.R. 316.

(3) (1913) 1 Ch. 314, at p. 323.

(4) (1887) 35 Ch. D. 460.

(5) (1918) 1 Ch. 437.

(6) (1927) 2 Ch. 197.

(7) (1937) 58 C.L.R., at p. 326.

(8) (1803) 7 Ves. 36 ; 32 E.R. 15.

(9) (1815) 1 Mer. 55 ; 35 E.R. 597.

(10) (1937) 58 C.L.R., at pp. 325, 326.

(11) (1936) 3 All E.R. 378.

(12) (1843) 3 Ha. 191 ; 67 E.R. 351.



H. C. OF A.  
1938.  
}

ROYAL  
NORTH  
SHORE  
HOSPITAL  
OF SYDNEY  
v.  
ATTORNEY-  
GENERAL  
(N.S.W.).  
—

essential parts of the bequest and which were not (See *In re Stanford* ; *Cambridge University v. Attorney-General* (1) ).

*Dudley Williams* K.C. (with him *H. Mitchell*), for the Attorney-General for the State of New South Wales. The objects of the bequest are charitable. The will discloses a general charitable intention. The third object is for the advancement of education ; therefore it is a good charitable object (*In re Spence* ; *Barclays Bank Ltd. v. Stockton-on-Tees Corporation* (2) ). As the essay scheme is for the advancement of education it is a good charitable trust even though the subjects of the essay may not in themselves be charitable subjects (*Thompson v. Thompson* (3) ; *Farrer v. St. Catharine's College, Cambridge* (4) ; *In re Berridge* ; *Berridge v. Turner* (5) ; *In re Mariette* ; *Mariette v. Governing Body of Aldenham School* (6) ; *Halsbury's Laws of England*, 2nd ed., vol. 4, p. 117).

[DIXON J. referred to *Chesterman v. Mitchell* (7) ; on appeal *sub. nom. Chesterman v. Federal Commissioner of Taxation* (8).]

The primary or paramount intention of the testator was educational ; it was not political as in *Bonar Law Memorial Trust v. Inland Revenue Commissioners* (9).

[LATHAM C.J. referred to *Bowman v. Secular Society Ltd.* (10).]

The statements there made with reference to a trust for the publication of a book are dicta and were, perhaps, put too widely. A trust is not necessarily non-charitable merely because it involves political propaganda and agitation (*In re Hood* ; *Public Trustee v. Hood* (11) ; *In re Foveaux* ; *Cross v. London Anti-Vivisection Society* (12) ). If there be an educational purpose or a religious purpose it is immaterial that it is also political (*Re Villers-Wilkes* ; *Bower v. Goodman* (13) ; *In re Scowcroft* ; *Ormrod v. Wilkinson* (14) ). What objects come within the fourth class of charities, i.e., trusts for

(1) (1924) 1 Ch. 73.

(2) (1938) 1 Ch. 96.

(3) (1844) 1 Coll. C.R. 381 ; 63 E.R. 464.

(4) (1873) L.R. 16 Eq. 19.

(5) (1890) 63 L.T. 470.

(6) (1915) 2 Ch. 284.

(7) (1923) 24 S.R. (N.S.W.) 108 ; 41 W.N. (N.S.W.) 11.

(8) (1926) A.C. 128 ; 37 C.L.R. 317 ; (1923) 32 C.L.R. 362.

(9) (1933) 49 T.L.R. 220.

(10) (1917) A.C., at p. 442.

(11) (1931) 1 Ch., at pp. 247, 248.

(12) (1895) 2 Ch. 501.

(13) (1895) 72 L.T. 323.

(14) (1898) 2 Ch. 638.



purposes beneficial to the community and not being for the relief of poverty or for the advancement of education or religion, is shown by the decisions in *Re Cranston*; *Webb v. Oldfield* (1); *Re Slatter*; *Howard v. Lewis* (2). Here the dominant and substantial part of the testator's intention was the extension of technical education. A general charitable intention is manifested in the will in two forms. It discloses an intention on the part of the testator to give his residuary estate for (a) the advancement of education on the three subjects of public importance specified by him, or (b) the benefit of education by awarding a substantial prize for an essay on those subjects. A trust does not fail for want of a trustee. The bequest, which is not limited as to time, was to be applied immediately (*In re Monk*; *Giffen v. Wedd* (3); *Conveyancing Act 1919* (N.S.W.), sec. 31). Although a direction to accumulate income beyond twenty-one years may be bad, the accumulated funds—if there is a general intention to devote the estate to charity—will be applied *cy-près* (*Martin v. Maugham* (4); *In re Swain*; *Monckton v. Hands* (5); *In re Knapp*; *Spreckley v. Attorney-General* (6)).

[LATHAM C.J. referred to *Harbin v. Masterman* (7).]

It was not of the essence of the testator's scheme that the committee of the Sydney Mechanics School of Arts and no other should administer the trust. The trust does not fail because of the disclaimer of that committee (*Reeve v. Attorney-General* (8); *Attorney-General v. Andrew* (9); *Attorney-General v. Stephens* (10); *Moggridge v. Thackwell* (11); *Mills v. Farmer* (12); *In re Willis*; *Shaw v. Willis* (13); *Verge v. Somerville* (14); *In re Wilson-Barkworth*; *Burstall v. Deck* (15); *Re Lawton*; *Gartside v. Attorney-General* (16)). Upon a general charitable intention being established there cannot be any intestacy as to any part of the residuary estate (*In re King*; *Kerr v. Bradley* (17); *In re Robertson*; *Colin v. Chamberlain* (18); *In re Knox*; *Fleming v. Carmichael* (19)). By its refusal to

H. C. OF A.  
1938.  
ROYAL  
NORTH  
SHORE  
HOSPITAL  
OF SYDNEY  
v.  
ATTORNEY-  
GENERAL  
(N.S.W.).

- |                                      |  |
|--------------------------------------|--|
| (1) (1898) 1 I.R. 431.               | (10) (1834) 3 My. & K. 347; 40 E.R. 132. |
| (2) (1905) 21 T.L.R. 295.            | (11) (1803) 7 Ves. 36; 32 E.R. 15.       |
| (3) (1927) 2 Ch., at p. 212.         | (12) (1815) 1 Mer. 55; 35 E.R. 597.      |
| (4) (1844) 14 Sim. 230; 60 E.R. 346. | (13) (1921) 1 Ch. 44.                    |
| (5) (1905) 1 Ch. 669.                | (14) (1924) A.C. 496.                    |
| (6) (1929) 1 Ch. 341.                | (15) (1933) 50 T.L.R. 82.                |
| (7) (1871) L.R. 12 Eq. 559.          | (16) (1936) 3 All E.R. 378.              |
| (8) (1843) 3 Hare 191; 67 E.R. 351.  | (17) (1923) 1 Ch. 243.                   |
| (9) (1798) 3 Ves. 633; 30 E.R. 1194. | (18) (1930) 2 Ch. 71.                    |
|                                      | (19) (1937) Ch. 109.                     |



H. C. OF A.  
1938.

ROYAL  
NORTH  
SHORE  
HOSPITAL  
OF SYDNEY  
v.  
ATTORNEY-  
GENERAL  
(N.S.W.).

administer the trust the committee of the Sydney Mechanics School of Arts became disentitled to the money provided for it in the will. That money, which, doubtless, was intended to be in the nature of a reward for services to be rendered, thereupon became applicable to the general purpose of the charitable trust (See *In re Chardon* ; *Johnston v. Davies* (1) ).

*R. K. Manning*, for the respondent trustee.

*Maughan K.C.*, in reply. Although a gift may be partly for an educational purpose, if it is substantially for a political purpose it is non-charitable (*Inland Revenue Commissioners v. Temperance Council of Christian Churches of England and Wales* (2) ; *Bowman v. Secular Society Ltd.* (3) ; *Bonar Law Memorial Trust v. Inland Revenue Commissioners* (4) ). Here the gift is designed to affect the government in administering one of the State departments ; therefore it has a political object and is non-charitable.

[STARKE J. referred to *Russell v. Jackson* (5).]

*Cur. adv. vult.*

Aug. 19.

The following written judgments were delivered :—

LATHAM C.J. This is an appeal from a decretal order of *Nicholas J.* whereby it was declared that “The Philip Musket Biennial Bequest,” a trust contained in the will of Dr. Philip Musket, was a valid charitable trust, and that the trust had not failed by reason of the refusal of the Sydney Mechanics School of Arts to administer the bequest. The order referred the matter to the Master in Equity to settle a scheme for the regulation and management of the trust. The appellant contends that the trust is not a good charitable trust and that it is void as infringing the rule against perpetuities ; and, alternatively, that the trust, as particularly declared in the will, has failed by reason of the refusal of the Sydney Mechanics School of Arts to administer the trust, that no general charitable intention appears in the will, and that therefore there is no power to direct the administration of the trust *cy-près*, with the result that the

(1) (1928) Ch. 464.

(2) (1926) 42 T.L.R. 618 ; 136 L.T. 27.

(3) (1917) A.C., at p. 442.

(4) (1933) 49 T.L.R. 220.

(5) (1852) 10 Ha. 204 ; 68 E.R. 900.



residuary estate, the subject matter of the trust, goes as upon intestacy.

By the will the testator provided that his sister Alice Muskett should receive the net income of his estate during her life, and, after making provision for certain gifts to charities, the testator then made provision for "The Philip Muskett Biennial Bequest." The will provided that what was called a notification fund should be established for the purpose of advertising the purpose and conditions of the bequest, the notifications to be controlled by the committee of the Sydney Mechanics School of Arts. The residue of the trust estate was left upon trust "to invest the same and apply the income in manner hereinafter mentioned for the perpetuation of an award to be termed 'The Philip Muskett Biennial Bequest.'" The testator declared that certain conditions "shall be observed" with respect to the conduct and management of the said award. Then followed a series of provisions for biennial essay competitions. Clause 3 of this part of the will contained the following provision:—"The objects of 'The Philip Muskett Biennial Bequest' and the purpose of the essay shall be to popularize and promote the principles which I have always advocated in my published works writings or lectures namely:—1. The adoption of measures to prevent the deaths of so many Australian infants. 2. The improvement of the Australian national food habits. 3. The extension of the teaching of technical education in State schools." This provision was followed by a set of detailed provisions for essay competitions. The committee for the time being of the Sydney Mechanics School of Arts was charged with the carrying out of these conditions and with making awards of prizes. The essay was to be printed and was to be read in public by the writer of the prize essay. Clause 6 of the will was as follows:—"In making their award the committee shall have paramount regard to the object of the establishment of 'The Philip Muskett Biennial Bequest' and subject to this primary desideratum, consideration shall be given to merit as shown in the following order of precedence:—(a) Literary excellence and style. (b) Confirmatory testimony of views held by bequestor. (c) Evidence of historical research into the causes which bring about national prosperity. (d) General proof of extensive reading."

H. C. OF A.  
1938.

ROYAL  
NORTH  
SHORE  
HOSPITAL  
OF SYDNEY

v.  
ATTORNEY-  
GENERAL  
(N.S.W.).

Latham C.J.



H. C. OF A.

1938.

ROYAL  
NORTH  
SHOREHOSPITAL  
OF SYDNEY

v.

ATTORNEY-  
GENERAL  
(N.S.W.).

Latham C.J.

The committee of the Sydney Mechanics School of Arts has refused to undertake the administration of the trust.

It was not contended upon the appeal that the fact that the trust moneys were to be applied in providing prizes for essays prevented the trust from being of a charitable character (See *Chesterman v. Federal Commissioner of Taxation* (1) and other cases cited by *Nicholas J.*). Nor was it contended that the fact that the prizes were to be given for the purpose of promoting principles held by a single person was fatal to the trust as a charitable trust (*Thompson v. Thompson* (2)—where the court upheld as valid the gift of an annual sum for “the best essays in statistics, politics or government, criticism and moral philosophy, &c., with reference to the doctrines mentioned in my writings on those subjects”). It was contended, however, that one of the objects of the trust, namely, No. 3, “the extension of the teaching of technical education in State schools,” was non-charitable. If this were so then the gift would be void, because the trustees would be at liberty to apply the moneys towards the promotion of a non-charitable object, and in the absence of such a provision as that which is contained in sec. 131 of the *Property Law Act 1928* of Victoria (as to which see *Roman Catholic Archbishop of Melbourne v. Lawlor* (3)), the whole gift would be void (*Attorney-General for New South Wales v. Adams* (4); *In re Tetley* (5)).

This objection was based upon an argument that object No. 3 was essentially and necessarily political. It was contended that it was intended to promote, in the form of essays, propaganda for the extension of technical teaching in schools which are controlled by the State, and that therefore the execution of the trust would necessarily involve political propaganda for the purpose of changing, in the direction of extension, the policy of the Government of the State with respect to such teaching. Reference was made to the case of *Bowman v. Secular Society Ltd.* (6) (quoted by *Dixon J.* in *Roman Catholic Archbishop of Melbourne v. Lawlor* (7)): “The abolition of religious tests, the disestablishment of the Church, the

(1) (1926) A.C., at p. 130; 37 C.L.R., at p. 318; (1923) 32 C.L.R. 362, at pp. 369, 371.

(2) (1844) 1 Coll. C.R. 381; 63 E.R. 464.

(3) (1934) 51 C.L.R. 1.

(4) (1908) 7 C.L.R. 100.

(5) (1923) 1 Ch. 258.

(6) (1917) A.C., at p. 442.

(7) (1934) 51 C.L.R., at p. 33.



secularization of education, the alteration of the law touching religion or marriage, or the observation of the Sabbath, are purely political objects. Equity has always refused to recognize such objects as charitable . . . a trust for the attainment of political objects has always been held invalid, not because it is illegal, for every one is at liberty to advocate or promote by any lawful means a change in the law, but because the court has no means of judging whether a proposed change in the law will or will not be for the public benefit, and therefore cannot say that a gift to secure the change is a charitable gift.” Reliance was also based upon *Inland Revenue Commissioners v. Temperance Council of Christian Churches of England and Wales* (1), where a trust which could be supported, if at all, only as a charitable trust was held to be invalid because it was instituted in the main for the direct purpose of effecting changes in the law and therefore for a political purpose (See also *Bonar Law Memorial Trust v. Inland Revenue Commissioners* (2) ).

On the other hand, the respondent referred to *Re Villers-Wilkes ; Bower v. Goodman* (3), where a trust to promote a bill to establish a new bishopric was held to be a good charitable trust. Reference was also made to the comments upon the dictum of Lord *Parker* (4) and upon *Inland Revenue Commissioners v. Temperance Council of Christian Churches of England and Wales* (1) to be found in *Tudor on Charities and Mortmain*, 5th ed. (1929), p. 41, and to *Thompson v. Thompson* (5) and *Farrer v. St. Catharine’s College, Cambridge* (6), which were cases relating to the promotion, by means of the writing of essays, of educational activities in relation to subjects which had a political aspect. *In re Hood* (7) was relied upon as showing that *Inland Revenue Commissioners v. Temperance Council of Christian Churches of England and Wales* (1) was based, not upon the fact that the object of the trust was the promotion of temperance (that being an object which could be promoted by political activity), but upon the fact that the trust was “for the promotion of temperance mainly by political means, and therefore taken out of the class of charitable objects” (8). (See a note upon the subject in the *Canadian Bar Review*, vol. 15, p. 566.)

H. C. OF A.  
1938.  
}  
ROYAL  
NORTH  
SHORE  
HOSPITAL  
OF SYDNEY  
v.  
ATTORNEY-  
GENERAL  
(N.S.W.).  
Latham C.J.

(1) (1926) 42 T.L.R. 618 ; 136 L.T. 27.	(5) (1844) 1 Coll. C.R. 381 ; 63 E.R. 464.
(2) (1933) 49 T.L.R. 220.	(6) (1873) L.R. 16 Eq., at pp. 23, 24.
(3) (1895) 72 L.T. 323.	(7) (1931) 1 Ch. 240.
(4) (1917) A.C., at p. 442.	(8) (1931) 1 Ch., at p. 252.



H. C. OF A.  
1938.

ROYAL  
NORTH  
SHORE  
HOSPITAL  
OF SYDNEY  
v.  
ATTORNEY-  
GENERAL  
(N.S.W.).

Latham C.J.

In my opinion it is impossible to draw the strict line of demarcation for which the appellant contends. There are many objects, undoubtedly of a charitable character, which have or may have political aspects. For example, there are laws dealing with the establishment, maintenance and control of public hospitals for the sick poor. From one point of view any proposal for an extension of such hospital facilities may have a political aspect. The consent of the government or of a State official might be required before any such hospital could be extended or before a new hospital could be established, and possibly different officers might have different views as to the wisdom of a particular extension or establishment proposed.

But it can hardly be suggested that, because the subject of public hospitals is a matter which is dealt with by legislation and in respect of which a State government will normally have a policy, any trust for the benefit of such a hospital or for adding to the number of such hospitals or for increasing their activities is non-charitable for the reason that it is directed towards political activity. A trust for the purpose of political agitation would be invalid as a charitable trust. It is not difficult to suggest reasons of public policy which would prevent recognition by the law of the establishment in perpetuity of a trust for the promotion of a particular political object as such, or for the maintenance and advocacy during the indefinite future of the principles of a particular political party. Such trusts might become a public danger. But the words of Lord *Sumner* in *Bowman v. Secular Society Ltd.* (1) should not be regarded as making it impossible to establish a trust as a charitable trust merely because the subject matter of the trust might be associated with political activity. In view of the great scope and extent of modern legislation, it is difficult, if not impossible, to suggest any subject which might not at one time or another become a subject of political propaganda.

In *Commissioners for Special Purposes of Income Tax v. Pemsel* (2) the principal objects of charitable trusts were arranged in classes : (a) the relief of poverty, (b) education, (c) advancement of religion, together with a fourth head including a miscellaneous class described as " purposes beneficial to the community, not falling under any of

(1) (1917) A.C., at pp. 452-467.

(2) (1891) A.C. 531, at p. 583.



the preceding heads." The relief of poverty is one of the commonest subjects with respect to which political activity is exercised. So also is education, and it needs but little acquaintance with history to be convinced that what has been regarded from time to time as the advancement of religion is a subject with regard to which acute and active political propaganda may take place. But these considerations have never prevented trusts falling within the three classes mentioned from being regarded as charitable trusts.

In this case one of the objects of the trust is to popularize and promote the principles which the testator has always advocated in his published works including—"the extension of the teaching of technical education in State schools." This is a trust for purposes of education and of extension of education. It falls within a well-recognized head of charitable trusts, and it cannot, in my opinion, be regarded as a trust to promote a particular object by political propaganda.

The next question arises out of the refusal of the committee of the Sydney Mechanics School of Arts to undertake the administration of the trust. It cannot be held that the refusal of the School of Arts to administer the trust has in itself the result of causing the trust to fail, unless, indeed, the management of an essay scheme by the School of Arts was an essential part of the charitable intention of the testator. This principle was applied in the leading case of *Moggridge v. Thackwell* (1); see also *In re Willis* (2); *In re Wilson-Barkworth* (3); *Re Lawton* (4).

But it is argued for the appellant that the whole scheme is so bound up with its administration by the School of Arts that it should therefore be held that the trust fails. There is, it is said, no general charitable intention disclosed in the will, but only a particular charitable intention to be carried out by means of the School of Arts and not otherwise, with the result that the trust cannot be administered *cy-près*. If the trust should fail on this ground the residuary estate of the testator would pass as upon an intestacy to the hospital, which is the residuary beneficiary of the testator's sister, who was his sole next of kin.

H. C. OF A.

1938.

ROYAL  
NORTH  
SHORE  
HOSPITAL  
OF SYDNEY  
v.

ATTORNEY-  
GENERAL  
(N.S.W.).

Latham C.J.

(1) (1803) 7 Ves. 36; 32 E.R. 15.

(2) (1921) 1 Ch. 44.

(3) (1933) 50 T.L.R. 82.

(4) (1936) 3 All E.R. 378.



H. C. OF A.  
1938.

ROYAL  
NORTH  
SHORE  
HOSPITAL  
OF SYDNEY

v.  
ATTORNEY-  
GENERAL  
(N.S.W.).

Latham C.J.

The principle which is to be applied in resolving such a question was very clearly stated in *Re Taylor ; Martin v. Freeman* (1) (quoted by Isaacs J. in *Attorney-General for New South Wales v. Adams* (2)) : “ If upon the whole scope and intent of the will you discern the paramount object of the testator was to benefit not a particular institution, but to effect a particular form of charity independently of any special institution or mode, then, although he may have indicated the mode in which he desires that to be carried out, you are to regard the primary paramount intention chiefly, and if the particular mode for any reason fails, the court, if it sees a sufficient expression of a general intention of charity, will, to use the phrase familiar to us, execute that *cy-près*, that is, carry out the general paramount intention in some way as nearly as possible the same as that which the testator has particularly indicated without which his intention itself cannot be effectuated.” (See also *Barby v. Perpetual Trustee Co. (Ltd.)* (3) and cases there cited.)

In the present case I agree with the view of *Nicholas J.* that the paramount object of the testator was not to benefit the Sydney Mechanics School of Arts, but to provide for the popularization and promotion of certain principles. The testator provides in clause 10 of the will that, in the event of public dissatisfaction manifested in the press with the administration of the scheme by the School of Arts, his trustee may request the President of the Chamber of Commerce and other representative public men to administer the scheme. This provision answers, or goes far to answer, the contention that the intention of the testator was really an intention to benefit the School of Arts (See *In re Stanford ; Cambridge University v. Attorney-General* (4)).

The will states in express terms that the objects of the trust and the purpose of the essay shall be “ to popularize and promote ” three principles. These are “ general prefatory words ” which indicate a general charitable intention (Cf. *In re Monk* (5)). The essay competition under the control of the Sydney Mechanics School of Arts is a means adopted by the testator for the popularization and promotion of these principles. Later in the will these principles

(1) (1888) 58 L.T. 538, at p. 543.

(3) (1937) 58 C.L.R. 316.

(2) (1908) 7 C.L.R., at pp. 124, 125.

(4) (1924) 1 Ch., at pp. 77, 78.

(5) (1927) 2 Ch., at p. 210.



are expressly referred to as paramount and primary. I have already quoted the provision of clause 6 which requires the committee in making its award to have “paramount” regard to the object of the trust, and subject to this “primary” desideratum to give consideration to certain features which are referred to as going to the merit of essays. It will be observed that the words “primary” and “paramount” appear in the words of *Kay J.* in *Re Taylor*; *Martin v. Freeman* (1).

Therefore it appears to me that the testator has expressly stated that he has a general intention of establishing a fund for the purpose of promoting certain principles, and has then gone on to provide a particular means of achieving this object. The means is not of the essence of the trust. If the particular means is impracticable, it is open to the court to frame a scheme *cy-près* for the attainment of the general objects mentioned in the will, namely, the promotion of the three principles mentioned. I am, therefore, of opinion that upon this part of the case the judgment of the learned judge was right, though the order should be varied to make it clear that the *cy-près* scheme to be settled should be directed towards the attainment of the objects mentioned and not necessarily to the attainment of those objects through a scheme of prizes for essays.

The appellant further contends that, even if the general provisions with respect to the bequest were valid, two particular provisions were invalid. The first of these provisions is contained in clause 8 (1) of the provisions relating to the bequest. It provides that the money available for the bequest shall (in part) be apportioned in the following manner:—“To the Sydney Mechanics School of Arts the sum of ten pounds half of which shall be devoted to the purchase of works of special utility for the reference library of the institution and the other half for the general purposes of the institution.” The School of Arts is not a charity. If this gift were an independent gift not associated in any way with the “bequest”, the School of Arts might be entitled to receive the capital sum representing the £5 payable every two years for the general purposes of the institution (*Bowman v. Secular Society Ltd.* (2); *Halsbury’s Laws of England*, 2nd ed., vol. 25, p. 83; *Elton*

H. C. OF A.  
1938.  
} ROYAL  
NORTH  
SHORE  
HOSPITAL  
OF SYDNEY  
v.  
ATTORNEY-  
GENERAL  
(N.S.W.).  
Latham C.J.

(1) (1888) 58 L.T., at p. 543. (2) (1917) A.C., at pp. 440, 441.



H. C. OF A.  
1938.

ROYAL  
NORTH  
SHORE  
HOSPITAL  
OF SYDNEY

v.  
ATTORNEY-  
GENERAL  
(N.S.W.).

—  
Latham C.J.

v. *Sheppard* (1); *In re Lawes-Wittewronge*; *Maurice v. Bennett* (2), the School of Arts not being a charitable corporation (*Re Wright*; *Westley v. Melbourne Hospital* (3)). But the gift of the other £5 every two years would be void as being non-charitable in character but involving the keeping of the corpus intact for an indefinite period (*Thomson v. Shakespear* (4)), and the subject of the gift would fall into the charitable fund, not passing to the next of kin as upon an intestacy (*In re Rogerson*; *Bird v. Lee* (5)). But the biennial gift of the £10 is, I think, essentially associated with the machinery devised by the testator for the management of the whole fund by the School of Arts. The money given is itself part of the "bequest." The gift cannot be regarded as a gift to the School of Arts independently of whether or not the school accepts the responsibility of managing the bequest. As the School of Arts has declined this responsibility the gift fails, its subject matter remains part of the charitable fund, and should be dealt with in the same way as the rest of the fund.

The second provision which is attacked is the following direction:—"I direct my trustee to accumulate one-third of the annual income arising from my residuary trust fund at compound interest to the intent that such accumulations shall be added to the corpus of my residuary trust fund and become part thereof." This provision is followed by a direction that the other two-thirds of the annual income shall be devoted to the purposes of the bequest in providing prizes, &c. It is clear that this direction for indefinite accumulation is contrary to the *Thelluson Act* (*Conveyancing Act* 1919 (N.S.W.), sec. 31). Such an accumulation could only be effective for a period of twenty-one years after the death of the testator (See sec. 31 (1) (a) (ii)). The testator died on 25th August 1909 and, accordingly, no accumulation could be made after 25th August 1930. The life tenant was alive during the whole of this period and therefore no accumulations have been made at all. The result is that the direction to accumulate is completely inoperative. Where, in the case of a charitable trust, such a direction fails for any

(1) (1781) 1 Bro. C.C. 532; 28 E.R. 1282.

(2) (1915) 1 Ch. 408.

(3) (1917) V.L.R. 127; 38 A.L.T. 150.

(4) (1860) 1 DeG.F. & J. 399; 45 E.R. 413.

(5) (1901) 1 Ch. 715.



reason, the result is not that the moneys directed to be accumulated pass as upon an intestacy. They are applied for the purpose of the charity and, if necessary (as in this case), a *cy-près* scheme will be settled (*Martin v. Maugham* (1) ; and see *In re Swain* (2) ).

The decretal order made by the learned judge should, in my opinion, be amended by altering the declaration that “a general charitable intention” is contained in the said will so as to declare that there is a “general charitable intention, namely, an intention to popularize and promote the following principles :—1. The adoption of measures to prevent the deaths of so many Australian infants. 2. The improvement of the Australian national food habits. 3. The extension of the teaching of technical education in State schools.”

The parties agreed that it is not necessary in this case to have any inquiry as to whether the nature of the principles referred to in the will can be ascertained from the published works or lectures of the testator or whether his works are contrary to public policy or morals, and the part of the order which directs such an inquiry should be struck out. (It may usefully be observed that the principles for the promotion of which the charitable trust is founded are the three principles mentioned, and not any particular form of those principles advocated in the testator’s works. The terms of clause 3 in the will make this clear.) The order should also be amended to make it clear that the reference to the Master is not for the purpose merely of appointing a manager of the trust in substitution for the School of Arts, and accordingly the “charitable trust” mentioned in the portion of the order relating to the settlement of a scheme should be referred to as “the charitable trust hereinbefore described.” There should be a declaration that the direction to pay moneys to the Sydney Mechanics School of Arts for the purchase of books is void.

The parties have agreed that the costs of all parties should be paid out of the estate, those of the trustee of the estate as between solicitor and client, and there is no objection to making such an order in the present case.

Subject to the variations mentioned, the appeal should be dismissed and the judgment of *Nicholas J.* affirmed.

H. C. OF A.  
1938.

ROYAL  
NORTH  
SHORE  
HOSPITAL  
OF SYDNEY

v.  
ATTORNEY-  
GENERAL  
(N.S.W.).

Latham C.J.

(1) (1844) 14 Sim. 230 ; 60 E.R. 346.

(2) (1905) 1 Ch. 669.



H. C. OF A.

1938.

ROYAL  
NORTH  
SHOREHOSPITAL  
OF SYDNEY

v.

ATTORNEY-  
GENERAL  
(N.S.W.).

RICH J. The testator, whose death occurred as far back as 1909, made elaborate provisions by his will for a public essay competition to be inaugurated after the death of his sister, which has recently taken place. A reading of the provisions makes it plain that they are inspired by a desire to promote objects to which, according to the testator, he had in his lifetime directed public addresses and writings of his own. The complicated scheme which he sets out in his will does not strike the mind as particularly well calculated to enlist public support for his ideas, although, no doubt, if it were faithfully carried out it would involve the periodical appearance before the public of the testator's name and works, which, however, we must take to be but a subsidiary or attendant incident of the scheme. But the plan cannot be faithfully carried out; for the body to which its execution has been intrusted by the will declines to have anything to do with it. We have to decide what is the consequence of this refusal on the part of the institution. I do not propose to restate the nature of the scheme, which sufficiently appears in the judgment under appeal and other judgments to be delivered in this court. The consequence, in my opinion, is not that the whole provision fails so that there is a lapse. I think that it appears from the nature of the testator's detailed directions that his main or primary object was to propagate the three principles to which he refers, namely, the diminution of infant mortality in Australia, the improvement of the dietary habits in Australia and the spread of technical education in State schools. The method by which he sought to accomplish his purpose was by establishing a biennial competition for a money prize for the best essay expounding these principles and by having the essay read to such audience as might be induced to attend by the absence of any fee for admission and the prospect of the proceedings closing early. The machinery he selected for carrying out this essay competition was the organization of the Sydney Mechanics School of Arts — the institution which has declined to perform the task. On the whole I think the main purpose was not dependent upon either the essay competition as the method or the Sydney Mechanics School of Arts as the machinery. There sufficiently appears, I think, a main purpose that the principles shall be propagated to which the selected mode



of execution is not indispensable. But I think that the very elaborate directions to the Sydney Mechanics School of Arts show that its participation in the essay competition is made so much a part of the scheme that no independent intention can be imputed to the testator of establishing an essay competition unless it was inaugurated under the authority of the Sydney Mechanics School of Arts. I am, therefore, of opinion that the refusal of that body results in a failure of the essay competition but not of a gift for the main purposes I have described, i.e., the promotion of the three objects the testator has stated, if those purposes are, as I think they are, charitable. The only serious attack upon their character was based upon the contention that they are inseparable and that the extension of the teaching of technical education in State schools was a political object. This contention, I think, drives to an absurd conclusion a somewhat vague and indefinite but well-known objection to gifts for public purposes. When it is said that a gift for political purposes is not charitable it cannot be meant that the advancement of every public object even if religious, eleemosynary or educational ceases to be charitable if the State is concerned in or affected by the result. I cannot agree that the third of the income which is the subject of a directed accumulation is to be accumulated for no charitable purpose. I think that this third is stamped with the charitable purpose as well as the rest. The annuity of £10 a year given to the School of Arts is difficult to classify but it seems inseparable from the essay competition and resembles a gift to an executor made on the assumption that he does not renounce. I think that the institution must be taken to have rejected the benefit of the £10 when it rejected the burden of the essay competition.

In my opinion the appeal fails.

STARKE J. Dr. Philip Edward Muskett by his will established what he called the "Philip Muskett Biennial Bequest." It strikes me as a vain and worthless gift but the question is whether it constitutes a good charitable trust.

The objects of the bequest were to popularize and promote the principles which the testator had advocated in his published writings or lectures:—(a) The adoption of measures to prevent the deaths

H. C. OF A.  
1938.

ROYAL  
NORTH  
SHORE  
HOSPITAL  
OF SYDNEY

v.  
ATTORNEY-  
GENERAL  
(N.S.W.).

Rich J.



H. C. OF A.

1938.

ROYAL  
NORTH  
SHOREHOSPITAL  
OF SYDNEY

v.

ATTORNEY-  
GENERAL  
(N.S.W.).

Starke J.

of so many Australian infants. (b) The improvement of the Australian national food habits. (c) The extension of the teaching of technical education in State schools.

The will, after providing for certain charitable bequests and a notification fund which I shall mention later, directed the trustees of the testator's will to stand possessed of "my residuary trust fund" upon trust to invest the same and apply the income for the perpetuation of an award to be termed "The Philip Muskett Biennial Bequest." The bequest was to be competed for in the form of an essay in every second year after the year of the testator's death and was open to any person of Australian birth or who had resided in any part of Australia for more than half his life. The administration of the bequest was entrusted to the committee for the time being of the Sydney Mechanics School of Arts and it was required to make an award naming the winner of the competition having regard to various considerations set forth by the testator in his will.

Firstly, it was contended that the gift was invalid because the third object of the trust was not for a charitable but a political object (*Bowman v. Secular Society Ltd.* (1); *Roman Catholic Archbishop of Melbourne v. Lawlor* (2)).

The third object of the trust is not for the attainment of any political object. It is not for the promotion of technical education in State schools by political means or activities. It aims at assisting a form of education carried on in State schools. As well might it be said that contributions toward the financial burdens of a State were political in object, yet they have always been regarded as charitable bequests.

The next contention was that the disclaimer of the trusts by the Sydney Mechanics School of Arts invalidated the bequest. It is impracticable to carry out the objects of the testator in the manner prescribed by him. It does not follow that the bequest is frustrated unless the breakdown of the machinery of the trust is such an essential part of the gift that the general purposes of charity cannot be distinguished and the machinery of the trust contains the only

(1) (1917) A.C., at p. 442.

(2) (1934) 51 C.L.R. 1.



purpose intended or contemplated by the testator (*Biscoe v. Jackson* (1)). "The authorities," said *Parker J.* in *In re Wilson ; Twentyman v. Simpson* (2), "must be divided into two classes. First of all, we have a class of case where, in form, the gift is given for a particular charitable purpose, but it is possible, taking the will as a whole, to say that, notwithstanding the form of the gift, the paramount intention, according to the true construction of the will, is to give the property in the first instance for a general charitable purpose rather than a particular charitable purpose, and to graft on to the general gift a direction as to the desires or intentions of the testator as to the manner in which the general gift is to be carried into effect. In that case, though it is impossible to carry out the precise directions, on ordinary principles the gift for the general charitable purpose will remain and be perfectly good, and the court, by virtue of its administrative jurisdiction, can direct a scheme as to how it is to be carried out. In fact the will will be read as though the particular direction had not been in the will at all, but there had been simply a general direction as to the application of the fund for the general charitable purpose in question. Then there is the second class of cases, where, on the true construction of the will, no such paramount general intention can be inferred, and where the gift, being in form a particular gift,—a gift for a particular purpose—and it being impossible to carry out that particular purpose, the whole gift is held to fail. In my opinion, the question whether a particular case falls within one of those classes of cases or within the other is simply a question of the construction of a particular instrument."

As the Sydney Mechanics School of Arts disclaims the supervision and management of the essay and award scheme contemplated by the testator, it is impossible to carry out those precise directions or to substitute any other institution for that chosen and particularly named by the testator. But the paramount general intention of the will is plain upon the words of the will, namely, to popularize and promote the three principles which the testator has always advocated. As these are charitable purposes the gift remains and is perfectly good. It may accordingly be administered *cy-près* by virtue of the administrative jurisdiction of a court of competent

H. C. OF A.  
1938.

ROYAL  
NORTH  
SHORE  
HOSPITAL  
OF SYDNEY  
v.

ATTORNEY-  
GENERAL  
(N.S.W.).

Starke J.

(1) (1887) 35 Ch. D., at p. 463.

(2) (1913) 1 Ch., at pp. 320, 321.



H. C. OF A.  
1938.

ROYAL  
NORTH  
SHORE  
HOSPITAL  
OF SYDNEY

v.  
ATTORNEY-  
GENERAL  
(N.S.W.).

Starke J.

jurisdiction. A further contention was based upon the testator's direction as to the income of the residuary trust fund. One-third of the annual income of the fund was to be accumulated at compound interest, to the intent that such accumulations should be added to the corpus of the fund and become part thereof, and two-thirds of the annual income arising from the fund was devoted to the award mentioned in the will. It was conceded that charities were not excepted from the statutory provisions restricting accumulation. (See *Conveyancing Act* 1919 (N.S.W.), sec. 31). But it was suggested that one-third of the income was, on the terms of the will, perpetually accumulated and never devoted to any charitable purpose.

It is a sufficient answer to the suggestion that the accumulations are added to the charitable fund, and two-thirds of the income of that fund are devoted to the testator's essay and award scheme. The income cannot be accumulated beyond the limit fixed by the Act. But the fund is charitable and in such a case the authorities warrant the proposition that a competent court may settle a scheme for the application of the accumulation beyond the prescribed limit (*Martin v. Maugham* (1) ).

The notification fund already mentioned may be here considered. The testator directed the trustees to set aside a sum of £1,000 under the designation of the "notification fund" and apply the income towards the expense of the essay and award scheme. This income was supplemented by the addition annually of the sum of £1 at the end of the first year from the appropriation of the fund and so on in arithmetical progression until the maximum income from the fund and the additions reached a level of £100. The trustees of the will were authorized to entrust the insertion of the notification to the Sydney Mechanics School of Arts and to make the necessary payments to the treasurer for the time being of that institution. The School of Arts, as before stated, disclaimed the whole trust, and the direction of the testator consequently becomes impracticable in the manner contemplated by him. But, though the particular direction cannot be carried out, the notification fund is nevertheless for carrying out the general charitable purposes of the will. The gift, therefore, remains and may be administered *cy-près*.



Lastly, there is a clause in the will which gives to the Sydney Mechanics School of Arts out of the Philip Muskett Biennial Bequest a sum of £10, half to be devoted to the purchase of works of special utility for the reference library of the institution, and the other half for the general purposes of the institution. In my opinion the gift fails, either because it is part of the essay and award scheme which is now impracticable, or because it is a gift to the institution as the administrator of the fund, which position it now disclaims. But there is no intestacy ; the gift is available for the general charitable purpose of the testator and may be administered accordingly.

Subject to variations which will be stated by the Chief Justice, the appeal should be dismissed.

DIXON J. The questions upon which this appeal turns are, first, the validity of the provision for what the testator calls his “ biennial bequest ” and, second, the existence and disclosure in his will of a charitable intention wider and more general than the execution of the particular directions which the provision gives.

The testator, a medical man who died in 1909, had, according to his will, advocated three principles in the course of his publications and lectures. One was the adoption of measures for the prevention of Australian infantile mortality. Another was the improvement of the food habits of Australians. The third was the extension of the teaching of technical education in State schools. Subject to certain gifts and to a life interest in favour of his sister, who died in 1936, the testator directed that his residuary estate should be held upon trusts for purposes in which these principles played a part. His scheme was unusual, if not strange.

He appears to have been interested in the Sydney Mechanics School of Arts, a body incorporated by statute with objects described as “ the intellectual improvement of its members and the cultivation of literature, science and art.” His will requires that, after his sister’s death, an award called the “ Philip Muskett Biennial Bequest ” shall be made in every second year for an essay written by a competitor who has spent at least half his life in Australasia. He provides that the objects of the “ bequest ” and the purpose of the essay shall be to popularize and promote the three principles mentioned. The

H. C. OF A.  
1938.  
} ROYAL  
NORTH  
SHORE  
HOSPITAL  
OF SYDNEY  
v.  
ATTORNEY-  
GENERAL  
(N.S.W.).  
Starke J.



H. C. OF A. “bequest” is to be administered by the committee for the time  
 1938.  
 {  
 ROYAL  
 NORTH  
 SHORE  
 HOSPITAL  
 OF SYDNEY  
 v.  
 ATTORNEY-  
 GENERAL  
 (N.S.W.).  
 ———  
 Dixon J.

being of the Sydney Mechanics School of Arts, unless his trustee forms the opinion that there is “a persistent and unmistakable demonstration of public dissatisfaction expressed in the columns of the press with the administration of the committee.” In that event his trustee may, in its discretion and so far as it thinks necessary, request “representative public men” to take over the administration. But, when the trustee thinks the necessary changes in the methods or personnel of the committee have been made, the administration of the “bequest” is to be restored to it.

The testator gives particular directions as to the maximum length of the essay, which he fixes at an ample measure, and as to the subsidiary qualities that are to be regarded as meritorious. But he says that the committee is to have paramount regard to the object of the “bequest,” which he describes as the “primary desideratum.” He then proceeds to direct a public reading of selected parts of the winning essay in the lecture hall of the School of Arts at a time and under conditions which he specifies with some particularity.

The funds for carrying out this plan are to be provided by his residuary estate in a manner which may be briefly described as follows. To begin with his trustee is to set aside £1,000 for what the testator calls a “notification fund.” The income of this fund is to be used for notifying to the public or advertising the purpose and conditions of the “bequest,” including, no doubt, the time and conditions of the biennial essay competition. The fund is to be supplemented by an annual subvention from the general residue, beginning with £1, and increasing by £1 a year; but it is not clear whether the amount is to be added to capital or income. The testator directs that one-third of the income of the general trust fund, i.e., the residuary estate, shall be accumulated and added to the corpus, and the remaining two-thirds of the income shall be devoted to the purposes of and incidental to the award as he sets them forth. He provides that £10 a year shall be given to the School of Arts, half of which shall be devoted to the purchase of books for the reference library and the other half to the general purposes of the institution and then, after meeting the expenses of publishing



the winning essay and the general cost of carrying out the scheme, the balance consisting of at least two-thirds of the whole sum available for the purposes of the "bequest" for the particular year is to be awarded to the winner.

The validity of these provisions was attacked upon the grounds, first, that the perpetual or indefinite accumulation of one-third of the income meant that it and a corresponding undivided part of the ever increasing corpus was devoted to no person or purpose and, second, that one of the three principles to which the essay must be directed did not involve a charitable purpose, namely, the principle of extending technical education in State schools.

The first of these grounds raises a strange problem. The actual accumulation directed is controlled by the *Thellusson Act* and cannot take effect. But, if there be a sufficiently general charitable purpose impressed upon the fund, this would mean only a *cy-près* application of the part of the income the accumulation of which is directed. But the ground of attack denies the foundation upon which the operation of this principle rests. For the contention is that one-third of the income of the fund must always be turned back to increase the fund so that for ever one-third of the income will not reach the charitable purpose. Considered as a mere notional proportion, one-third of the income of the fund would appear to be destined to perpetual accumulation. But, if the intended fate of the actual sum representing one-third of the income of any given year is considered, it will be found that two-thirds of the income it produces in the following year goes to the purposes of the essay competition and one-third to the corpus. The income of this one-third for the next succeeding year is dealt with in the same way and so on indefinitely. The general nature of the provision shows that the sole intention of the accumulation is to create a large fund for the fulfilment of the testator's plan and a consideration of the ultimate use of the produce of each particular sum to be placed to corpus makes it clear that in the end the moneys to which it gives rise would be applied to that purpose.

In my opinion there is enough to satisfy the requirement that the purpose of the accumulations must be the fulfilment of the purpose said to be charitable. Accordingly, if in fact the objects

H. C. OF A.  
1938.

ROYAL  
NORTH  
SHORE  
HOSPITAL  
OF SYDNEY  
v.

ATTORNEY-  
GENERAL  
(N.S.W.).

Dixon J.



H. C. OF A.  
1938.

ROYAL  
NORTH  
SHORE  
HOSPITAL  
OF SYDNEY  
v.  
ATTORNEY-  
GENERAL  
(N.S.W.).

Dixon J.

of the provision are all charitable, the one-third part of the income, the accumulation of which is directed, might be applied *cy-près*.

But the second ground upon which the validity of the trust is attacked is that one of those objects is not charitable. No one disputes that the spread of technical education is a charitable purpose. Nor is it denied that the promotion of such an object by awards or rewards for writing essays is a valid method of fulfilling such a purpose. But the contention is that because, according to the testator's intention, it is in State schools that technical education is to be extended, his essay competition really amounts to the institution of a propaganda to influence the administration of State education and that this is a political, and not a charitable object.

The case law dealing with the distinction between charitable purposes and political objects is in an unsatisfactory condition, but the basal ideas upon which it rests may be seen. It is, of course, quite clear that any purpose which is contrary to the established policy of the law cannot be the subject of a good charitable trust. But there is a further consideration arising from the very nature of the doctrine by which charitable trusts are supported. Under all four heads of the well-known classification to which such trusts are referred, an essential element is the real or imputed intention of contributing to the public welfare. A coherent system of law can scarcely admit that objects which are inconsistent with its own provisions are for the public welfare. Thus, when the main purpose of a trust is agitation for legislative or political changes, it is difficult for the law to find the necessary tendency to the public welfare, notwithstanding that the subject of the change may be religion, poor relief, or education. When the subject matter is none of these and the case must fall under the fourth class, viz., that of undefined purposes for the public good, the difficulty becomes even greater.

Again, where funds are devoted to the use of an association of persons who have combined as a political party or otherwise for the purpose of influencing or taking part in the government of the country, it is evident that neither the good intentions nor the public purposes of such a body can suffice to support the trust as charitable.



But, in the present case, the main purpose is the spread of technical education. Under a system of State education those whom the testator doubtless regards as needing it are necessarily to be found in State schools. It is not his purpose to establish a means of affecting or interfering with government administration. No doubt he is seeking to mould opinion or spread doctrine on the subject of technical education. His purpose is to provoke the study of the subject and to propagate general views for the purpose of producing a widespread opinion coinciding with his own. But I do not think that his direction or purpose can fairly be regarded as coming within the objection that it is political in character. In my opinion none of the purposes of the essay competition is invalid.

But the committee of the Sydney Mechanics School of Arts has declined the performance of the task which the testator's plan imposes upon it. I think that its statement may be regarded as a renunciation or disclaimer. This raises the question whether the provision does not fail because it cannot be carried out by the means and in the manner chosen by the testator. In so far as his scheme depends upon the School of Arts undertaking its administration it must clearly fail. The first question, I think, is to inquire as a matter of interpretation how far his choice of the Sydney Mechanics School of Arts is an integral or essential part of his essay competition. After studying the provisions of his will, I have come to the conclusion that it discloses no intention of establishing his detailed plan of making an award biennially for an essay unless the committee of the Sydney Mechanics School of Arts undertakes the institution and control of the matter in the first instance. It is true that he provides for the possibility of public dissatisfaction with their control becoming so great that a change is necessary. But the clause in which he makes the provision is carefully guarded and the conditions prescribed are stringent. It seems clear that, except as a last resort he meant that the plan should not leave their control. The clause operates only after the essay competition has been established under the committee's control. He did not contemplate the establishment or inauguration of the plan by any other body or person. I do not think that it can be inferred that a plan into the details of which the nature and identity of the Sydney Mechanics School of Arts

H. C. OF A.  
1938.

ROYAL  
NORTH  
SHORE  
HOSPITAL  
OF SYDNEY

v.  
ATTORNEY-  
GENERAL  
(N.S.W.).

Dixon J.



H. C. OF A.  
1938.

ROYAL  
NORTH  
SHORE  
HOSPITAL  
OF SYDNEY  
v.

ATTORNEY-  
GENERAL  
(N.S.W.).

Dixon J.

entered so much was intended to be carried out in the manner and form provided notwithstanding that the committee of that body refused to undertake it. Accordingly I am of opinion that, so far as the charitable purposes disclosed by the provision depend upon the establishment of the essay competition prescribed by the will, they must fail.

But it does not follow that the whole disposition fails so that there is an intestacy under which the next of kin would be entitled. If the particular manner of advancing the three purposes or principles which the testator propounds is limited to an essay competition, the disposition does so fail. But, if a wider intention exists and that intention does not exceed the limits of legal charity, the gift may be administered *cy-près* by a court of equity as a good charitable disposition. The question whether the substantial intention of such provisions as those now in question is to advance the ultimate charitable purposes but by the particular means directed or, on the other hand, the intention is confined to giving effect to the particular plan as the main or essential object in view is commonly said to be one of construction. No doubt it involves an ascertainment of the intention implicit in the testamentary dispositions. But it depends less on the construction of language than upon an estimate of the relative importance attached to the particular and to the general by the author of the scheme. In most cases in which an elaborate scheme is directed of a charitable nature the testator has been animated by a desire to achieve some object which may be stated in wider terms than his detailed plan. But it is not legitimate to infer from the fact that his plan is a means to an end that the accomplishment of the end is his substantial purpose. The question is whether, independently of the means he has chosen, he had any charitable intention. Sometimes the question is stated as a decision between regarding a particular plan as subordinate to the end and regarding it as the end in itself. Sometimes it is stated as an inquiry whether the particular means are essential or a necessary condition. Again, the question has been described as amounting to an inquiry whether the particular means prescribed should be considered as a direction engrafted upon a gift to a main purpose. But, however, it is stated, the matter to be considered is



whether the will should be understood as meaning that the fund should be devoted to the attainment of the end, although the precise method directed should prove impracticable. In the present case it is clear that the testator attached great importance to the procedure which he had worked out for the propagation of his views after his death. I have had some hesitation in coming to the conclusion that his will discloses any wider intention. But, on the whole, I think that, notwithstanding the manner in which his desires are set out, it does sufficiently appear that they are the detailed means which he has thought out for the purpose of effectuating an object which he had set up. That object is the propagation of the opinions or views which he says he has advocated in his lectures and published writings with reference to Australian infantile mortality, Australian food habits and technical education in State schools. It does, I think, appear on the face of the provision that he has proceeded from these main purposes to a detailed scheme for their achievement. They are the chief, principal, paramount, or substantial purpose of his disposition. I am, therefore, of opinion that the so-called "bequest" may be carried out *cy-près*.

A small biennial sum of ten pounds is given to the Sydney Mechanics School of Arts and the gift raises a separate question. Does the gift fail as a result of the disclaimer? On the whole I think it does. It is given out of the money available for "The Philip Muskett Biennial Bequest." The gift takes its position in the will amongst the financial provisions for carrying out the essay competition. Part of it is given for the purchase of works of special utility for the reference library in the institution, and part for the general purposes of the institution. It is not easy to follow the train of thought embodied in the provision. Perhaps it was intended as a reward to the institution. But, however that may be, the testator appears to have regarded it as part of the scheme for the essay competition.

Subject to a variation of the decretal order, I think the appeal should be dismissed.

H. C. OF A.

1938.

}

ROYAL  
NORTH  
SHOREHOSPITAL  
OF SYDNEY

v.

ATTORNEY-  
GENERAL  
(N.S.W.).

Dixon J.

*Decretal order varied by substituting for the fourth declaration therein the following declaration:—“(4) that there is contained in the said will a general charitable intention*



H. C. OF A.

1938.

ROYAL  
NORTH  
SHORE  
HOSPITAL  
OF SYDNEY

v.

ATTORNEY-  
GENERAL  
(N.S.W.).

to popularize and promote the following principles :—  
1. *The adoption of measures to prevent the deaths of so many Australian infants.* 2. *The improvement of the Australian national food habits.* 3. *The extension of the teaching of technical education in State schools*” : by striking out therefrom the order directing an inquiry whether the nature of the principles referred to in the will can be ascertained from the published works or lectures of the testator or whether his works are contrary to public policy or morals and the directions relating to such inquiry : by substituting for the order that the Master in Equity do settle a scheme as set forth in the said order the following order :—“that it be referred to the Master in Equity to settle a scheme for the regulation and management of the charitable trust hereinbefore described” ; and by adding a declaration that the direction in the said will contained to pay to the Sydney Mechanics School of Arts the sum of ten pounds fails. Decretal order otherwise affirmed and appeal otherwise dismissed. Costs of all parties to be paid out of the estate of the testator, those of the trustee as between solicitor and client.

Solicitor for the appellant, *G. W. Ash.*

Solicitor for the respondent Attorney-General for New South Wales, *J. E. Clark*, Crown Solicitor for New South Wales.

Solicitors for the respondent trustee, *Perkins, Stevenson & Co.*

J. B.