

9, 1959

IN THE PRIVY COUNCIL

Appeal No. 28 of 1958

ON APPEAL
FROM THE HIGH COURT OF AUSTRALIA

IN THE MATTER of the Trusts of the Will of the
late FRANCIS GEORGE LEAHY late of Harefield
and Bungendore in the State of New South
Wales, Grazier, deceased.

B E T W E E N

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DORIS CAROLINE MARY LEAHY
(Widow of the said Francis George
Leahy),

FRANCIS JOHN LEAHY,

HENRY JOSEPH LEAHY,

DOROTHY MARGARET HALL,

JAMES PATRICK LEAHY,

MICHAEL MAURICE LEAHY,

GEORGE BONAVENTURE LEAHY, and

GENEVIEVE MARY REDDY

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(the children of the said Francis
George Leahy)

IN
INSTITUTE OF ADVANCED
LEGAL STUDIES
12 March 1960
25 RUSSELL SQUARE
1.

55574

Appellants

- and -

JOHN FRANCIS DONNELLY,

CLEMENT OSBORNE WRIGHT, and

JOHN BEDE MULLEN,

(Trustees of the Will of the
said Francis George Leahy,) and

HER MAJESTY'S ATTORNEY GENERAL

in and for the State of New
South Wales

Respondents

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C A S E FOR THE APPELLANTS

RECORD.

1. This appeal is brought by special leave
granted by Her Majesty by Order in Council dated the

pp.96 to 98

RECORD

pp.92
and 93.
pp.94
and 95

3rd June, 1958, against two Orders of the High Court of Australia both dated the 11th March, 1958, allowing an appeal of the Respondent, Her Majesty's Attorney-General in and for the State of New South Wales from one declaration contained in a Decretal Order of the Supreme Court of New South Wales in its Equitable Jurisdiction and dismissing an appeal of the Appellants from the other declaration contained in the said Decretal Order.

2. The appellant, Doris Caroline Mary Leahy, is the widow of Francis George Leahy (hereinafter called the Testator) and the other appellants are his children.

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pp. 17 &
18.

3. The testator died on 11th January, 1955, leaving real and personal property in the State of New South Wales, which was sworn for probate purposes at a value of £348,791. 2. 1.

pp. 5 to
11.

4. By his Will made on 16th February, 1954, the testator after making certain bequests of money gave devised and bequeathed the whole of his real estate and the residue of his personal estate to his trustees upon trusts, two of which are material to this appeal, that is to say :-

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(a) As to his property "Elmslea",

p.7 lines
21 to 28.

"Upon trust for such Order of Nuns of the Catholic Church or the Christian Brothers as my said Executors and Trustees shall select and I again direct that the selection of the Order of Nuns or Brothers as the case may be to benefit under this clause of my Will shall be in the sole and absolute discretion of my said Executors and Trustees";

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p. 8 lines (b)
26 to 43.

As to the rest and residue of his estate both real and personal "Upon trust to use the income as well as the capital to arise from any sale thereof in the provision of amenities in such Convents as my said Executors and Trustees shall select either by way of building a new Convent where they think necessary or the alteration of or addition to existing buildings occupied as a Convent or in the provision of furnishings in any such Convent or Convents and I Declare that my said Executors and Trustees shall have the sole and absolute discretion of deciding where any such premises

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shall be built or altered or repaired and the Order or Orders of Nuns who shall benefit under the terms of this clause."

5. Probate of the said Will was granted to the above-named respondents John Francis Donnelly, Clement Osborne Wright and John Bede Mullen, the executors and trustees thereof, by the Supreme Court of New South Wales on the 6th day of July, 1955, and on the 9th day of July, 1956, they issued out of the said Court an Originating Summons by which the following questions were submitted to the Court for its decision :-

pp. 1 & 2.

(1) Whether upon the true construction of the Will of the said deceased and in the events which have happened the trust directed therein in respect of the property known as "Elmslea" situated at Bungendore is void for uncertainty.

p. 2 lines
7 to 11.

(2) Whether upon the true construction of the said Will and in the events which have happened the trust directed therein as to the rest and residue of his Estate both real and personal is void for uncertainty.

p. 2 lines
12 to 15.

6. The respondents to the said summons were Her Majesty's Attorney General in and for the State of New South Wales and your appellants.

7. Evidence before the said Supreme Court of New South Wales shewed that within the Roman Catholic Church, Associations of religious women are, according to Canon Law, of two kinds, namely Orders and Congregations; and that an Order is a religious organization, the members of which take solemn vows and observe one of the ancient rules of conventual life; a Congregation is a religious organization, the members of which take only simple vows which may be either perpetual or temporary and observe rules not necessarily identical with or as rigorous as one of the ancient rules. Evidence also shewed that convents of Orders as well as convents of Congregations were and are in existence in the Commonwealth of Australia and in the State of New South Wales.

pp.12 to 14.
pp.31 & 32.
pp.33 & 34.

p.12 lines
23 to 40,
and p. 13.

8. At the hearing of the said Originating Summons on the evidence it was conceded by the Respondent Trustees and Her Majesty's Attorney-General in and for the State of New South Wales that Orders of Nuns included Orders which are legally charitable and Orders which are not, and that

p.13 lines
1 to 9.

RECORD

convents of non-charitable Orders existed in New South Wales. It was also conceded by all parties that the Christian Brothers, an association of religious men of the said Church in New South Wales carrying on educational work is a charity.

p.13 lines
1 to 21.

9. Evidence before the said Court also shewed that Orders of Nuns which are charitable as well as Orders which are not charitable exist throughout the world and that the names of all Orders and Congregations of religious women of the said Church are kept by the Sacred Congregation of Religious in Rome.

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p.32 lines
25 to 33.

p.51 lines
37 to 48.
p.72 lines
12 to 23.
p.89 lines
1 to 13.

10. Section 37 D of the Conveyancing Act, 1919-1954 being an Act of the Parliament of the State of New South Wales provides as follows :

- (1) No trust shall be held to be invalid by reason that some non-charitable and invalid purpose as well as some charitable purpose is or could be deemed to be included in any of the purposes to or for which an application of the trust funds or any part thereof is by such trust directed or allowed. 20
- (2) Any such trust shall be construed and given effect to in the same manner in all respects as if no application of the trust funds or of any part thereof to or for any such non-charitable and invalid purpose had been or could be deemed to have been so directed or allowed.
- (3) This section shall not apply to any trust declared before or to the will of any testator dying before the commencement of the Conveyancing, Trustee and Probate (Amendment) Act, 1938. 30

p.37 lines
1 and 2.

11. The said Originating Summons came on for hearing before the Honourable Mr. Justice Myers a Judge of the Supreme Court of New South Wales sitting in Equity and after hearing argument His Honour answered the questions in the said Summons as follows :-

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- (1) No; or on any other ground.
- (2) Yes.

p.42 lines
21 to 24.

12. As to the disposition of "Elmslea" Mr.

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10	<p>Justice Myers held that the testator by the phrase "Order of Nuns" intended to mean an association of women properly described as an Order of Nuns according to the Canon Law of the Catholic Church. His Honour also held that "Order of Nuns" must be taken to mean an Order anywhere in the world. Accordingly His Honour held that the gift was not bad for uncertainty. His Honour also held that the disposition did not create a perpetuity and relying upon re Ogden (1933 Ch. 678 at 683) that it was an absolute gift to the Order.</p>	<p>p.35 lines 41 to 45</p> <p>p.36 lines 6 and 7.</p> <p>p.36 lines 25 to 41</p>
20	<p>13. In the High Court of Australia, with respect to the said disposition, their Honours, the Chief Justice and Mr. Justice McTiernan disagreed with His Honour Mr. Justice Myers with regard to the meaning of the words "Orders of Nuns" and said "It seems clear enough that when the Will speaks of Orders of Nuns it includes Congregations of Sisters". Their Honours agreed with Mr. Justice Myers that there was no territorial limitation placed upon the class of persons who (be it personally or in respect of their work) are intended to benefit by the trust. Their Honours also disagreed with with Mr. Justice Myers that the gift is an absolute one in favour of the body chosen or its members and held that it was the evident intention of the trust to enable the trustees to appropriate "Elmslea" to the purposes of some Order the selection of which was left to their discretion and came to the conclusion that unless the trust was capable of being supported wholly or in part as a charity, it should fail. Their Honours further came to the conclusion that, having regard to S.37 D of the Conveyancing Act, 1919-1954 the trust was capable of being supported in part. Their Honours, Mr. Justice Williams and Mr. Justice Webb agreed with His Honour Mr. Justice Myers that the gift of "Elmslea" was valid. Their Honours further agreed with Mr. Justice Myers that the gift was an absolute gift to the individuals comprising the community selected by the trustees at the date of the death of the testator and they agreed with Their Honours the Chief Justice and Mr. Justice McTiernan that the words "Orders of Nuns" included Congregations of Sisters as well as Orders of Nuns in the strict sense. Their Honours further came to the conclusion that the Orders and Congregations which are eligible for selection must be restricted to Orders and Congregations carrying on their activities in New South Wales at the date of the testator's death. Mr. Justice Kitto held that</p>	<p>p.53 lines 5 & 6.</p> <p>p. 53 lines 36 to 49 and p.54 lines 1 to 4.</p> <p>p.58 lines 35 to 37.</p> <p>p.58 lines 37 to 40.</p> <p>p.81 lines 29 to 32. p.81 lines 32 to 41.</p> <p>p.70 lines 44 to 50.</p>
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RECORD

p. 87 lines
8 to 14.

Orders included all orders of Nuns and Congregations of Sisters of the Roman Catholic Church and that the gift was an immediate and absolute gift to the body selected.

14. As to the disposition of the residuary estate.

- (a) On the hearing of the said summons before Mr. Justice Myers in the Supreme Court it was conceded in argument by all parties that the bequest of residue set out in paragraph 4 (b) hereof would be invalid unless saved by the operation of the said Section 37 D of the Conveyancing Act. 10
- (b) Mr. Justice Myers took the view that there was a power of distribution among an accurately defined class and that the gift was not void as an attempted delegation of testamentary power. His Honour held that the testator, by the use of the word "amenities" meant no more than the actual matters enumerated in the disposition and that in the case of charitable orders of nuns such amenities are necessarily charitable. 20
- (c) His Honour being of the opinion that the gift was bad unless it was saved by Section 37 D of the Conveyancing Act referred to the opposing views taken as to the effect of that section and of S. 131 of the Property Law Act, 1928, of the State of Victoria which in terms is practically identical (namely that illustrated by the decision of Nicholas C.J. in *Eq. in Union Trustee Co. v. Church of England Property Trust* (1946) 46 S.R. N.S.W. 298) and that of Fullager J. in *Re. Belcher* (1950 V.L.R. 11) and held that the mischief which the section intended to remedy is the failure of trusts in which testators have shown an intention to benefit charity but which, because of the inclusion of non-charitable objects have failed altogether. His Honour said: "In my view the Statute was enacted to give effect to trusts not irrespective of the intention of the Testator but conformably to it or at least to that part of it which contemplated the direction of the whole fund to charity. Accordingly the section only applies where a 30 40

p.38 lines
8 to 10.
p.39 lines
23 to 26

p.40 lines
44 to 46.
and
p.41 lines
1 to 9.

p.41 lines
17 to 21.
p.41 lines
22 to 32.

10 charitable intention appears from the trust itself and the application of the whole fund to charity is one way of completely satisfying the intention of the testator". His Honour held that a trust for organizations described by general terms as a class was indistinguishable from a trust for "benevolent purposes" and that Section 37 D did not apply to a trust for such purposes and consequently the disposition was not saved by the section.

20 15. In the High Court of Australia The Chief Justice and Mr. Justice McTiernan were of the opinion that the disposition was a disposition of income of indefinite duration and that expenditure of money on building a convent or altering or adding to it or providing furnishings therein would be a charitable purpose if all convents were engaged in charitable work. Their Honours after referring to Gilmour v Coats (1949 A.C. 427) (1948 Ch. 1) (1946 Ch. 340) held that the trust of the residual real and personal estate would, apart from Section 37 D, extend beyond what is charitable and could not be supported as valid. They also held that the trust is clearly one for purposes. They referred to Bowman v. Secular Society Ltd. (1917 A.C. 406, at p.441).

p.60 lines
2 to 20.

p.60
line 10

30 "A trust to be valid must be for the benefit of individuals or must be in that class of gifts for the benefit of the public which in the courts in this country are recognised as charitable in the legal as opposed to the popular sense of that term. Moreover, if a trustee is given a discretion to apply trust property for purposes some of which are and some are not charitable, the trust is void for uncertainty".

40 They also referred to Houston v. Burns (1918 A.C. 337, at p.343). After stating the terms of Section 37 D their Honours said :- "In support of the contention that Section 37 D does not apply it is said it is not simply because a non-charitable and invalid purpose is included that the trust is void. It is because the trusts are uncertain, tend to a perpetuity and involve a testamentary delegation. It appears to us that the direct and simple answer to this contention is that if the trust was wholly charitable none of these objections would be open and therefore it would be to hold the trust invalid for the reason forbidden by the section. It is clear enough that the uncertainties relied

p.60 line
21.

p.61 lines
1 to 39.

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p.61 lines 35 to 39.	upon would not suffice to invalidate what other- wise would be a charitable trust. It is equally clear that reliance upon the tendency to a perpetuity or the direct application of the rule against perpetuities would be impossible were the trust admittedly for charitable purposes. The section therefore cannot be excluded because the trust extends beyond the conception of charity if in other respects sub-section (1) of Section 37 D is applicable There is no doubt a	10
p.61 lines 40 to 45.	difficulty in saying precisely what is the ambit of the words "by reason that some non-charitable and invalid purpose as well as some charitable purpose is or could be deemed to be included in the purposes". "Provided the convents comprised within the clause were all associations of religious women whose purposes were within the legal conception of charity none of the uncertain-	
p.61 lines 40 to 46.	ties relied on could have taken the trust outside that section nor could the fact that a complete discretion resided in the trustees have mattered". After referring to the provision contained in Section 37 D and to In re Belcher (1950 V.L.R. 11), Union Trustee Co. of Australia v. Church of England Property Trust, (1946 46 S.R. (N.S.W.) 298), In re Ashton (1955 N.Z.L.R. 192) and In re Hollole (1945 V.L.R. 295), Their Honours said :	20
p.63 lines 14 to 26.	"It appears to us that what must be found in order to justify an application of the provision is a distinct or sufficient indication of an intention to authorize the application of the income or corpus of the fund or other property to what is clearly a charitable purpose even although the description which embraces the purpose is so wide that it may go beyond charitable purposes or there is associated with the description a description of non-charitable purpose or purposes capable of going beyond the legal conception of charity. But it is perhaps unsafe to generalize". Their Honours held that "the reference is prima facie charitable in the sense that it is known that most convents would be the objects of legal charity. The words are distributive and it is plain that by restricting their application they may be restrained to charitable objects".	30
p.63 lines 35 to 40.		
pp. 64 to 82.		
	16. Their Honours Mr. Justice Williams and Mr. Justice Webb, took the view that neither the purposes to which the income of residue could be devoted nor the Orders of Nuns for whose benefit it could be expended are uncertain. They held that "Orders of Nuns" included Congregations but	50

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- that only Orders which carry on their work in New South Wales are entitled to benefit. They further held that the disposition of residue was apart from Section 37 D void for a perpetuity. With regard to the application of Section 37 D their Honours agreed with Mr. Justice Myers that the charitable intention must appear from the trust itself and that in order to satisfy the section the application of the whole fund to charity must be one way of
- 10 completely satisfying the intention of the testator, but their Honours were of the opinion that since the trust directed or allowed the trustees to spend the trust funds for purposes which include charitable purposes, it could not be said that the trust would not be completely satisfied by the expenditure of the whole of the fund for these purposes. Their Honours expressed the opinion that the application of the section was not confined to non-charitable trusts invalid for uncertainty, they said : "It
- 20 states in clear and unambiguous language that it is applicable whenever some non-charitable and invalid purpose as well as some charitable purpose is included in the purposes for which the trust funds may be spent. A non-charitable purpose which is certain but infringes the rule against perpetuities is a purpose which is non-charitable and invalid. It has the same fatal effect upon the validity of the trust as a whole as a non-charitable purpose which is invalid because it is uncertain, and there
- 30 is nothing in the language of the section to suggest that it is not equally applicable to either case or indeed to any case where there is an admixture of a non-charitable and invalid purpose, whatever form the invalidity may take, and a charitable purpose". Consequently their Honours held that the Section saved the disposition.
17. Mr. Justice Kitto held that Cl. 3 of the Will (Elmslea) and Cl. 5 of the Will (residue) illustrated two methods by which a testator may effectuate a desire that property shall be used or
- 40 applied after his death for purposes rather than for particular persons. One method is to give property to an individual or to an aggregation of individuals without creating a trust but relying upon the donees that the property will be applied to the desired end and such donees may be selected by the testator or from a group or class of particular persons or aggregations of persons by a person appointed by him. The other method is to create
- 50 a trust for the application of the property for the desired purposes, which for its validity requires a
- p.72 lines
7 to 9.
- p.79 lines
1 to 9.
- p.79 lines
14 to 24
- p.81 lines
8 to 23
- pp. 82 to
91.
- p.84 lines
23 to 30
- p. 85 lines
12 to 15

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p. 86 lines 34 and 35.
p. 88 lines 10 to 34.

restriction of the purposes so that only legally charitable purposes are included. His Honour held that the disposition of "Elmslea" adopted the first method. And His Honour held that the disposition of the residue adopted the second method; and that it would be void for uncertainty of objects unless it could be construed as limited to communities which exist for the pursuit of legally charitable purposes. His Honour further held that apart from statute the trust could not be so limited. With respect to Section 37 D of the Conveyancing Act His Honour said with reference to the words "some non-charitable and invalid purpose" that they clearly mean "some purpose which is neither charitable nor for the benefit of any particular beneficiary either selected or to be selected". He further said : "The key to the section, I think, is to be found in the expression "included in any of the purposes to or for which" etc. considered with the fact that the section is dealing with cases of invalidity arising from the nature of those purposes. For the section to apply purposes must be designated as the objects of the trust and they must be purposes not for the benefit of definite beneficiaries. But I see nothing in the section to suggest that it means to discriminate between, on the one hand, cases where charitable purposes and non-charitable and invalid purposes are designated by separate descriptions and, on the other hand, cases where they are designated by a composite description". Consequently His Honour held the disposition of income to be valid.

p. 91 lines 11 to 25.

18. The Appellants respectfully submit :-

- (I) As to the disposition of "Elmslea"
- (a) That the power of selection is an invalid power by reason of the lack of certainty in the field of selection: "Orders of Nuns of the Catholic Church" though ascertainable in number may refer to Orders which were at the testator's death active (i) in New South Wales or (ii) in Australia or (iii) elsewhere;
- (b) that if the power is not invalid for uncertainty its exercise would not vest any beneficial interests in any persons but could devote the property to a purpose not

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- necessarily charitable; the trust is therefore void for uncertainty (Bowman v. The Secular Society, 1917 A.C. 406 at 441-2). Hence the disposition is a delegation of testamentary power not recognised by law; (Houston v. Burns 1918 A.C. 337 at 343) (A.G. v. National Provincial Bank 1924 A.C. 262 at 264 and 268) (Chichester Diocesan Fund v. Simpson 1944 A.C. 341 at 348, 349-350) (Tatham v. Muxtable 81 C.L.R. 639).
- p.60 line 10
p.88 line 7.
- p.60 line 21
p.70 line 20.
p.54 line 21
p.70 line 1.
p.37 line 38
p.84 line 41.
- 10 (c) that no trust as contemplated by Section 37 D of the Conveyancing Act is created by the disposition and therefore the operation of the section is not attracted;
- (d) that the non-charitable purpose is not "invalid" within the meaning of that word in S. 37 D and that therefore the operation of the section is not attracted;
- 20 (e) that if the operation of the Section is attracted, it is conceded that the provisions of the section would save the disposition for the Christian Brothers, but it is contended that the provisions of the section are inapplicable to the words "such Orders of Nuns of the Catholic Church" so as to exclude non-charitable Orders from the field of selection.
- (II) As to the disposition of the residuary estate ;
- 30 (a) that the disposition fails because the power given to the trustees is invalid for the following reasons :
- (i) The "amenities" of the kind described, and in particular "furnishings", are uncertain, and
- (ii) the convents within which the power of selection may be exercised, "the order or Orders of Nuns who shall benefit", are not defined, the uncertainty as to such orders being similar to that in the disposition of "Elmslea", and in addition, it is uncertain whether the selection is confined to Orders established at the testator's death or extends to Orders that may be subsequently established as well;
- 40 (b) that if the power is not invalid, the disposition is void for perpetuity, because it is a

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disposition of income in perpetuity either for the benefit of a fluctuating body of individuals, i.e., inmates of the Convents to be selected, or for purposes not exclusively charitable, (Verge v. Somerville, 1924 A.C. 496 at 499).

Consequently the disposition is an attempt to delegate testamentary power not authorised by law.

- (c) Section 37 D of the Conveyancing Act applies only if the disposition of property is a trust for purposes valid in every respect, save that some purpose, which is both non-charitable and invalid, is, or could be deemed to be, included in the purposes to or for which the application of the property is directed or allowed and the disposition of the residuary estate does not attract the Section because the disposition does not constitute a trust, nor is it a trust for purposes, nor does it include, or can be deemed to include, a purpose which is "invalid" in the sense in which that word is used in the section. 10
- (i) The power is not a power to select individuals from a defined class to take property beneficially; nor is it a power of selection among charitable purposes only; therefore there is no person or combination of persons who can enforce the exercise of the power and hence no trust is constituted, see generally *Inland Revenue Commissioners v. Broadway Cottages Trust* 1955 1 Ch. 20. 30
- (ii) If there is a constituted trust, it is not a trust for "purposes" but a trust for the benefit of persons, the nuns or sisters in the convent of the Order (or Congregation) selected. The provisions of amenities as described is not a trust for charitable purposes even though only convents of charitable orders could be selected since such amenities would not necessarily further charitable work or be ancillary to it, (see re *Coxen* 1948 Ch. 747 at 755; re *Warre's Will Trusts* 1953 2 A.E.R. 99). Even if the trust is not one for the benefit of persons, it is a trust for a single purpose and 40

not a trust for "purposes" (see Roman Catholic Archbishop of Melbourne v. Lawler 51 C.L.R. 1).

- (iii) If the trust is a trust for purposes, those purposes are described by one descriptive phrase and such a phrase discloses no intention of the testator to dispose of the income of his residuary estate to charitable purposes or to non-charitable purposes which are invalid.

In so far as any non-charitable purpose can be deemed to be included in the purposes, such a purpose is not "invalid" within the meaning of that word in the Section because it is not indefinite, - (see re Clarke, 1923 Ch. 407 at 417-418). A gift of income in perpetuity for non-charitable purposes is not bad because the purposes are invalid; it is bad because the gift is void for a perpetuity.

- (iv) Section 37 D cannot be applied to a single descriptive phrase of purposes and it is submitted re Belcher 1950 V.L.R. 11, is the correct approach. (See also re Gillingham Bus Disaster Fund 1958 1 A.E.R. 37 at 40). The Section was intended only to apply to trusts which manifest a charitable intention and also manifest, as an alternative, a non-charitable and indefinite intention, e.g. as appear in Attorney-General v. Hunter 1899 A.C. 309; Blair v. Duncan 1902 A.C. 37; and re Forrest's Will 1913 V.L.R. 425, and other cases a collection of which is made in Tudor on Charities 5th Ed. 66.

A.G.v.Hunter
p.40 line 37
p.80 line 35
p.90 line 28
p.54 line 20

Blair v.Duncan
p.54 line 20.

Forrests Will
p.73 line 47.

19. The appellants submit that because the judgment and orders of the High Court of Australia are incorrect in law that it should be declared :

- (a) That upon the true construction of the Will of the said deceased and in the events which have happened the trust directed therein in respect of the property known as "Elmslea" situated at Bungendore is void.
- (b) That upon the true construction of the said Will and in the events which have happened the trust directed therein as to the rest and residue of his Estate both real and personal is void.

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20. The Appellants further submit that this appeal ought to be allowed because the decision of the High Court was wrong for the following among other reasons :-

- (a) That the disposition of Elmslea is void and that Section 37 D of the Conveyancing Act 1919-1954 does not operate to validate it for the reasons set out in paragraph 18 I(a) to (e) hereof.
- (b) That the disposition of residue is void and that the said section 37 D does not operate to validate it for the reasons set out in paragraph 18 II (a) to (e) hereof.

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A. B. KERRIGAN.

D. S. HICKS.

IN THE PRIVY COUNCIL

O N A P P E A L
FROM THE HIGH COURT OF AUSTRALIA

IN THE MATTER of the Trusts of the
Will of the late FRANCIS GEORGE
LEAHY late of Harefield and
Bungendore in the State of New
South Wales, Grazier deceased

B E T W E E N

DORIS CAROLINE MARY LEAHY, FRANCIS
JOHN LEAHY, HENRY JOSEPH LEAHY,
DOROTHY MARGARET HALL, JAMES
PATRICK LEAHY, MICHAEL MAURICE LEAHY,
GEORGE BONAVENTURE LEAHY and
GENEVIEVE MARY REDDY. Appellants

- and -

JOHN FRANCIS DONNELLY, CLEMENT
OSBORNE WRIGHT, and JOHN BEDE MULLEN,
(Trustees of the Will of the said
Francis George Leahy,) and HER
MAJESTY'S ATTORNEY GENERAL in and
for the State of New South Wales.
 Respondents

C A S E F O R T H E A P P E L L A N T S

WATERHOUSE & CO.,
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Solicitors for the Appellants.