

Hendry v The Perpetual Executors and Trustees Association of Australia Ltd (1961) 106 CLR 256

<https://lawcasesummaries.com/knowledge-base/hendry-v-the-perpetual-executors-and-trustees-association-of-australia-ltd-1961-106-clr-256/>

Facts

- George, John and Catherine Hendry formed a partnership by deed on 29 December 1911. The partnership was to extend for 5 years. Isabella Hendry, their deceased mother, had bequeathed them her estate. The land given to them became partnership assets and other land was subsequently acquired by the partnership.
- The title to the partnership land was registered in the names of the existing partners as tenants in common in equal shares. The partnership continued after the initial 5 years until 16 July 1929 when John died intestate.
- At this time the affairs of Catherine were being managed for her by the Master in Equity due to mental health issues. That official represented Catherine in an arrangement where George and Catherine, with the agreement of Isabella, who was the only other next-of-kin of John, took over his interest in the partnership in equal shares.
- George and Catherine became equal partners upon the terms of the original deed and the business was managed by George. George died on 11 September 1955 leaving a will dated 19 August 1929, a date shortly after John's death and when he was managing the partnership.
- George had bequeathed "*all my livestock*" to his nephew, Gordon Hendry. The remainder was sold. The monies from the sale of the real estate were to go to William McDonald while the monies from the sale of the personal estate were to go to Isabella.
- Isabella challenged this, stating that the testator had no livestock or real estate and she was entitled to the whole of the estate by virtue of the gift to her of the moneys arising from the sale of what the testator describes as "*the residue of my personal estate*".

Issues

- Was Isabella Hendry entitled to the whole of the estate by virtue of the gift to her of the moneys arising from the getting in of what the testator describes as the residue of my personal estate

Held

- The High Court dismissed the appeal.
- The Court was required to consider the words of the will at the time immediately before his death.
- The Court conceded that the livestock and real estate belonged to the partnership and that there may be difficulties in determining the proceeds of the real estate and property. However, this did not mean that the deceased did not have any interests in the partnership property pending liquidation.

- When considering the will, it was clear that George wished to divide up his interests into 3 parts: livestock, real estate and personal property. Any other reading would go against his manifest will.

Quotes

"What has to be done is to determine what the testator meant by his words in his will and when the will is looked at in the light of the circumstances as they existed immediately before his death the conclusion is inevitable that he was dividing what he had into three parts, and that he was disposing separately of whatever interest he had in livestock (which could only be his partnership interest), of the net proceeds of whatever interest he had in land (which, again, could only be his partnership interest), and of the net proceeds of whatever interest he had in personalty other than livestock. It may well be that there are difficulties in determining the net proceeds of the testator's real estate and of the residue of his personalty in this sense, but these difficulties afford no reason whatever for construing the will as effecting no division of his estate and as disposing of the whole of his property to his sister under the phrase "the residue of my personal estate". To do so would simply be to defeat the testator's manifest intention"

Full Text

The full text is available here: <https://jade.io/j/?a=outline&id=65557>

Law case summary from www.lawcasesummaries.com