

BISHOP BRINDLE & OTHERS v. FATHER HAYS**IMPORTANT DECISION ON CHURCH PROPERTY**

English Catholic and secular papers to hand by last week's mails contain a final report on the most important case in the various lawsuits in which the Rev. Father Hays—well known in these countries as a temperance lecturer—was engaged as a principal shortly before his departure from England for Australia. In the present instance the Rev. Father was defendant, and, as in the other cases (in which he was plaintiff), the decision was against him. The case now under consideration involved very important issues in regard to property held upon trust for church purposes, and was watched with close interest by Catholic ecclesiastics and laity all over Great Britain. An opinion elicited by us from an eminent lawyer, and printed, as to its substance, at the close of the following report, shows that the case, and the decision thereupon, have a practical bearing upon ecclesiastical trusteeships in New Zealand. The following report of the case of Bishop Brindle and others v. Father Hays appeared in identical terms in the London 'Tablet' of August 5, the 'Catholic Times' of August 4, and in several secular papers:—

The Case.

The adjourned trial of this action was heard on the 28th July at Market Rasen County Court. It will be remembered that the first hearing took place at the same court on August 19, 1904, and that his Honor, Judge Sir G. Sherston Baker, found a verdict for the defendant, Father Hays, on the ground that he (the judge) had no jurisdiction to try the action. The action was brought by Bishop Brindle and the other Trustees of the Catholic Trust Property at Market Rasen, whereby they sought: (1) A declaration that they were the legal owners of this property as such trustees; (2) a claim for mesne profits, and (3) an injunction to restrain the defendant from exercising acts of ownership over the property, such as the collection of rents from the tenants, etc. The necessity for the action arose out of the fact that Father Hays set up a claim to collect the rents and deal with the property as if he were the absolute owner, and in defiance of the wishes of the trustees, in whom the property was vested, he having gone to the length of suing one of the tenants for rent which she had been requested to pay to the trustees as owners, and the disbursements of which they deemed they were entitled to control.

The refusal of Judge Sir Sherston Baker to try the case on the first occasion came as a complete surprise to the plaintiffs, their legal advisers, and Counsel, and it was felt that, in view of the extreme importance of the case, the matter could not be allowed to rest there, as it was a question immediately and most materially affecting Catholic Trust Properties, and the relationship of trustees and priests in charge of missions all over the country.

The plaintiffs thereupon decided to appeal against the judgment of Sir Sherston Baker, as they were advised his decision was incorrect, and ultimately the Divisional Court, consisting of Lord Chief Justice and Justices Kennedy and Ridley, made an order on the 17th January, setting aside the judgment given on August the 19th, and directing that a new trial should be had.

This restored the parties to their original position, and the case was again entered for trial on March 17 last, but, unfortunately, had to be adjourned by reason of the defendant's absence in Australia. The plaintiffs offered no objection to the adjournment, although it was a matter of considerable inconvenience to all the witnesses in attendance, because they did not wish that the slightest advantage should be taken of the defendant in any way, or that an absolutely fair and impartial trial of the matters at issue should not be had.

It should be mentioned, in order that there may be a proper appreciation of the seriousness of these issues, that the defendant's solicitors had on the 10th of March filed a notice that the defendant intended to rely on the following grounds of defence, namely, that the claim for which he was summoned was barred by the Statute of Limitations. This claim requires a little explanation. The effect of it, if successfully pleaded, would mean that, assuming that Father Hays was not able to establish a title in himself to the property, he might still show that there was no title in the trustees; in other words, that some person or persons had acquired a possessory title such as would in law oust the trustees' ownership. It requires only a moment's reflection to show how

grave the issue was, and, therefore, it is not a matter of surprise that the case had excited an amount of interest considerably more than local.

The plaintiffs were represented by Mr. H. Maddocks, barrister-at-law (instructed by Messrs. Walmsley and Reid, solicitors, of Derby) and the defendant was represented by Mr. G. L. Haslehurst, of Messrs. Toynbee, Larken and Co., solicitors, of Lincoln.

Mr. Maddocks, in opening the case for the plaintiffs, explained very fully the position of matters in relation to the Trust Property, the claim of the trustees, and why it had been necessary to bring it into Court, and, further, that the plaintiffs in doing so were animated only by a desire to establish their right to the property, a right which had been disputed, and which, as trustees, they were bound to enforce. It was also explained that there was no intention to divert any of the revenues of the trust estate to any other purpose, and that necessity alone had compelled them to take proceedings which were amply justified by the plea which defendant had put on record.

Monsignor McKenna gave evidence, proving that he and Monsignor Tasker, the survivors of the original trustees, had held part of the property since the year 1860, and the remainder since 1864, and that the same had devolved on the present trustees, the plaintiffs, by conveyance in 1903, and he further gave evidence as to the management of the trust property in the past.

Evidence was also called in support of the plaintiffs' case that they had never, in any way, relinquished the ownership of the property.

Father Hays, the defendant, did not appear, being still abroad, but Mr. Haslehurst argued on his behalf that during the late Canon Dwyer's charge of the mission from 1875 to 1900, the trustees had so acted as in fact to deprive themselves of the ownership of the property, and that, although such ownership might not be in Father Hays, yet it was not in the plaintiffs, and evidence was called in support of this contention.

Mr. Maddocks replied to the legal argument, on behalf of the plaintiffs, and his Honor, Sir G. Sherston Baker, in giving judgment, enlarged upon the importance of the case, and after reciting the facts as to the devolution of the trust property from 1860, said it was argued that Canon Dwyer had received the rents as tenant at will, and that the plaintiffs were barred by reason of the Statute of Limitations. He proceeded to consider, in the light of the evidence that had been given, Canon Dwyer's position, and concluded by stating that he found distinctly and emphatically that both Canon Dwyer and the defendant, Father Hays, were agents merely of the trustees, and that, thereby, no title adverse to them had been acquired by any person, and that, therefore, the legal ownership of the property was in the trustees. Under these circumstances he would grant the declaration of title asked for, and make an order that the defendant should account for mesne profits. The plaintiffs' counsel having intimated earlier in the case that, if the declaration were granted, the injunction would not be pressed for, he would make no order in respect to that, but there would be judgment for the plaintiffs with costs against the defendant.

This (says the London 'Tablet') concluded a case which has excited a considerable amount of interest, and as to which there has, in certain quarters, been great misapprehension of the action of the trustees. We think the foregoing facts, and the result of the case, amply justify such action in the view of all fair-minded people.

How it Affects New Zealand.

An eminent lawyer, to whom we submitted the report that appears above, writes us as follows:—

'I have perused the article headed "Bishop Brindle and Others v. Hays," in the "Tablet." The report is rather meagre—that is, wanting in detail. The object of the defence was to prove that the trustees (the plaintiffs) had lost their right to the property at Market Rasen by reason of Canon Dwyer having been in adverse possession thereof for 20 years. Under the Act 3 and 4 William IV., C. 27, such possession gives the claimant a title to land as against the original owner. I would infer that the trustees had not for many years actively interfered in the management of the property, but left everything in the way of management (including the collection and disbursement of rents) to the local clergyman.

'Counsel for Father Hays seized upon this point to show that the possession by the local clergyman was adverse to the trustees. If the judge had agreed with this contention, the trustees (judging from the "Tablet" report) would have lost their right to the property. The Judge, however, held that Canon Dwyer and Father Hays had been, in relation to the property, merely the agents of the trustees, and therefore the Statute did not apply.