Judgment of the Lords of the Judicial Committee of the Privy Council, on the Appeal of the Mayor of Lyons v. *the Advocate-General of Bengal and others, from the High Court of Judicature at Fort William in Bengal: delivered 5th February*, 1876.

Present:

Sir James W. Colvile.
Sir Barnes Peacock.
Sir Montague E. Smith.
Sir Robert P. Collier.

THE questions in this Appeal arise upon one of the bequests in the Will of Major-General Claude Martin, whereby he gave the annual sums of 5,000 rupees and 1,000 rupees to be applied respectively to the discharge and relief of poor debtors detained in prison in Calcutta. The residue of his large property the testator bequeathed, in the special manner more particularly stated hereafter, to increase the funds of certain charitable establishments which, by previous clauses in his Will, he had founded in Calcutta, Lucknow, and the City of Lyons, in France.

The bequests to poor prisoners in Calcutta having failed by reason of the abolition of imprisonment for debt, the point to be considered is, whether these gifts are to be dealt with by the Court upon the principle of a *cyprès* application of them, or whether, as the Appellants contend, they fall into the residue, so as to increase the endowments of the three establishments above referred to.

The testator was a Frenchman, born in Lyons. He

entered the military service of the East India Company, and attained the rank of Major-General. With the sanction of the British Government he afterwards took service under the Ruler of Oude, and resided at Lucknow, where he died in 1801.

The Will, dated the 1st January, 1801, was composed and written by the testator himself in English, a language of which, it appears, he had only an imperfect knowledge. It contains numerous bequests, comprised in thirty-four articles or clauses, and has been the subject of many suits and much litigation. Several questions arising upon it, and notably the question whether the English law relating to aliens had been introduced into British India, were determined by this Committee on appeal in 1836. The judgment was delivered by Lord Brougham, and some passages of it will hereafter be referred to. The general history of the suits will be found in Mr. Moore's full report of the case (see The Mayor of Lyons *v.* The East India Company, 1 M. I. A., 176).

By the Will in question the testator bequeathed his property, which he valued at upwards of thirty lacs of rupees, partly to individual legatees, and more largely to various charitable objects. The most prominent of the charities were the institutions he founded in Lucknow, Calcutta, and Lyons for educational and other purposes, his desire being to perpetuate his memory in these cities. The purposes are not precisely alike in the three cities, owing to the different conditions of the countries to which they belong. The bequest to Calcutta is found in the 24th article of the Will; that to the City of Lyons is contained in the 25th article, and is as follows:—

"I give and bequeath the sum of 200,000 sicca rupees to be deposited in the most secure interest fund in the town of Lyon, in France, and the Magistrates of that town to have it managed under their protection and control; that above-mentioned sum is to be placed, as I said, in a stock or fund bearing interest, that interest is to serve to establish an institution for the public benefit of that town; and the Academy of Lyon are to devise the best institution that can be permanently supported with the interest accruing of the above-named sum; and, if no better, to follow the one devised in the Article 24th as at Lucknow; the institution to bear the name of Martiniere, and to have an inscription made at the house of the institution, mentioning the same title as the one of Calcutta, and this institution to be established at the Place St. Pierre, St. Safurinn being where I had been christened—there at that place to buy or build a house for that purpose; and

to marry two girls every year, to each 200 livres tournois, besides paying about 100 livres for the marriage and fest of each of those who married; or if the institution, such as the Lucknow one, educating a certain number of boys and girls, then they are to have a sermon and a dinner for the school-boys and those who are married, and they are to drink a toast in memory of the institutor; and a medal is to be given of the value of 50 livres, with a premium in cash or in kind, to be about 200 livres, to the boy or girl that has been the most virtuous, and behaved better during the course of the year; and also to have a premium of the value of 100 livres for the second that behave better, and also a third premium of about 60 livres for the third that behave better. I am in hope that the Magistrate of the town will protect the institution; and in case the sum above allowed of 200,000 sicca rupees is not sufficient for a proper interest to support the institution, and buying or building the house, then I give and bequeath an additional sum of 50,000 sicca rupees, making 25,000 sicca rupees. One of my male relations residing at Lyon may be made adminisitator or executor, joined with any one appointed by the Magistrate, to be manager of the said institution; and these managers are to have an economical commission for their trouble, taken from the interest of the sum above mentioned. I also give and bequeath the sum of 4,000 sicca rupees to be paid to the Magistrates of the town of Lyon, to liberate from the prison so many prisoners as it may extend, such that are detained for small debt; and this liberation is to be made the day of month I died, as that the remembrance of the donor may be known, and my name, Major-General Martin, is the institutor; and as given and bequeathed the sum of 4,000 sicca rupees to liberate some poor prisoners as far as that sum can afford. This I mention to have it made known as that, if neglected, that some charitable men may acquaint the magistrate of the town of Lyon, as that they might oblige my executor, administrator, or assigns, to pay the same above said, and be more regular in their payments."

It is to be observed that this 25th article contains the gift of an annual sum of 4,000 rupees to be paid to the magistrates of Lyons to liberate poor prisoners detained for debt.

The analogous gift in favour of poor prisoners in Calcutta, which forms the subject of the present Appeal, is not in like manner included in article 24, containing the principal bequest to that city, but is found in a separate article (the 28th), which is as follows :—

"I give and bequeath the sum of 5,000 sicca rupees to be paid annually to the Magistrate, or Supreme Court of Calcutta, or to Government. This sum is to serve to pay the debt of some poor honest debtor detained in jail for small sum, and to pay as many small debts and liberate as many debtors as the sum can extend. This liberation is to be made the day, month, I died, as a commemoration of the donor; and as being a soldier, I would wish to prefer liberating any poor officers or other military men detained for small debt preferable to any other. And I also give

and bequeath the sum of 1,000 sicca rupees to be paid yearly, and to make a distribution of it to the poor prisoners remaining in jail on the same day as the one mentioned above, both sums making 6,000 rupees every year."

The material part of the 43rd article, which contains what may be treated as a residuary disposition, is in the following terms :—

"After all accounts being settled, and sum insured for the interest for the payment of the several monthly pension, and the several payment of gift and others, as also the several establishment, if a surplus above 100,000*l.* sterling, or about 10 lacs of sicca rupees, remain of my estate, that above surplus of 10 lacs of sicca rupees is to be divided in such a manner as to increase the several establishment of Calcutta, at Lyon, and Lucknow, as that they may be permanent and exist for ever. Besides the sum allowed for finishing all the building, and other of Constantia House, which I suppose may amount to 200,000 sicca rupees, I also give and bequeath the sum of 100,000 sicca rupees for the support of the college and other school, to be regulated as the Calcutta establishment, as per Articles 24, as also as the establishment at Lyon, Articles 25, the gift for the poor of Lucknow, to be conducted as mentioned in Articles 23. I also give and bequeath the sum of 4,000 sicca rupees to be paid annually for to liberate as many prisoners for debt at Lucknow as it may extend, and if none, then that sum is to remain to the estate ; any sum remaining is to be placed at interest for to accumulate, and improve the several establishment and concern of indigo."

This article, it may here be remarked, comprises a gift of 4,000 rupees, to be paid annually to liberate poor prisoners for debt at Lucknow, but with a direction, that "if none, that sum is to remain to the estate."

Without going into the details of the suits, it will be convenient to refer generally to the proceedings relating to the fund now in dispute.

It appears that by an order of the Supreme Court of Judicature at Fort William of the 11th November, 1801, made in the cause of Uvedale *v.* Palmer, a scheme which had been settled by the Master for the administration of the charities for the release and relief of poor prisoners at Calcutta was confirmed by the Court, and funds to satisfy these charities were, by orders of the Court, transferred to the credit of two accounts entitled respectively, "Distribution of General Claude Martin's Fund for the Release of Prisoners," and "Distribution of General Claude Martin's Fund for the Relief of Prisoners."

The above orders are not found in the Record, but their existence was admitted by the Counsel,

and the substance of them is stated in the petition of the Officiating Advocate-General of the 3rd August, 1865. and in a previous Decree of the 30th August, 1840. It also appears that the income of these funds, in excess of what was required for poor prisoners, had accumulated, and at the date of the petition of the Advocate-General above referred to, the fund amounted in the aggregate to about 351,000 rupees.

This petition (Record 83), after stating that for many years past, owing to the passing of laws for the relief of insolvent debtors and other causes, the existing scheme "had become obsolete;" submits (par. 9) that there were useful charitable objects of a kind not very different from those contemplated by the testator, and also charitable objects of other descriptions which the testator approved and made the subjects of other bequests, towards which the income of the funds might now be beneficially applied; and prays to be at liberty to submit a scheme for the application of the funds "in lieu and supercession of the former schemes."

On the 3rd August, 1865, an order was made on this petition as prayed. This was done without citing the Mayor of Lyons; and in making it the Court evidently assumed it had power to deal with these funds on what is called the *cyprès* principle.

A scheme was accordingly settled and confirmed by an order of the Court on the 2nd March, 1866.

This scheme provides, in substance, that a sum of 150,000 rupees, representing an annual income of 6000 rupees, should be reserved in an account to be headed, "The Account of General Martin's Fund for the Release and Relief of prisoners;" the income of which was to be applied by the visiting justices to assist convicts who had conducted themselves properly in prison upon their discharge; and that the corpus of the fund, after reserving the above sum of 150,000 rupees, should be applied as follows, *viz.*: "that one lac of rupees should be transferred to the credit of the Governors of the Calcutta Branch of La Martinière, and the residue (amounting to nearly a lac of rupees) after paying the costs of these proceedings, should be transferred to the credit of the Lucknow Branch of La Martinière for the general purposes of these institutions respectively." Some special directions also were given regarding

the disposition of the fund transferred to Lucknow.

It will be convenient to mention here what has been done with respect to the charities for the liberation of poor prisoners in Lyons and Lucknow. With respect to Lyons, it was declared by the Decree of the 23rd February, 1832 (and this declaration was not disturbed on the appeal, in 1836), "that a snm sufficient to satisfy the bequest of 4000 rupees to be paid annually for the liberation of prisoners at Lyons, together with the accumulation of interest since testator's death, had been fully paid to the Mayor and Commonalty of Lyons" (Record 78). It appears therefore that this fund, instead of being carried to an account in the causes, as was done with the Calcutta fund, was, before the year 1832, paid over "fully" to the municipality of Lyons, and that the administration of it has since taken place without any control by the Court.

With respect to Lucknow, the Decree of the 23rd February, 1832, declared that it being impossible owing to the form of Government at Lucknow and other causes to give effect to the gift in favour of poor prisoners at that place, the bequest was void. This declaration relating to the gift to poor prisoners of Lucknow was not disturbed on appeal, and the residue was increased by the amount which would have been required to satisfy it. No objection appears to have been made to the Lucknow gift going into the residue; but it is to be remembered that in the clause of the Will relating to this legacy it is expressly directed that in case of failure "the sum is to remain to the estate."

The Order of the 2nd March, 1866, confirming the scheme for the application of the funds in dispute, appears to have been unquestioned until 1873, when the Petition of the Mayor of Lyons, which gives occasion to the present Appeal, was filed. That Petition (dated 21st June, 1873), after stating the facts, and asking relief with respect to other sums which was granted in the Court below, prays that it might be declared that the bequests in the 28th Article of the testator's will had failed, and that the sum standing to the credit of the accounts for the release and relief of prisoners at the date of the Order of the 2nd March, 1866, fell into and formed part of the residue of the testator's estate. It also prays for relief consequent on this declaration,

to the effect that this amount with the accumulations should be ascertained and carried to the general credit of the causes, and divided between the Petitioner and the other residuary legatees.

The Judges of the High Court, in a Judgment fully stating their reasons, whilst granting relief to the Petitioner on other matters, refused this prayer; and inserted in their formal Decree a declaration containing the ground of their refusal in these terms:—"That the charitable gift in the 28th clause of the will was an absolute charitable gift, capable of being applied *cyprès;* and that the Petitioner, the Mayor of Lyons, as one of the residuary legatees under the will, is not entitled to any of the funds appropriated to that gift."

It is to be noticed that the only question raised by the Petition is, whether the Appellant, representing the city of Lyons, is entitled as one of the residuary legatees to a share of these trust funds, as having fallen into the residue. Whether the Martinière establishment of Lyons should have been included in the distribution provided by the scheme ordered by the Court is a different question, which is not raised by the Petition.

Three points were made at the Bar by the Appellant's Counsel.

1. That the doctrine of *cyprès* disposition of charitable legacies is inapplicable where the residuary bequest is to charity.

2. That if this be not true as a general proposition, the doctrine is inapplicable to the particular case, by reason of the special provisions of General Martin's will.

3. That the previous Decrees have determined the question in the Appellant's favour.

I. The Appellant's Counsel did not dispute the general doctrine, and there is no doubt that although strongly disapproved of by Lord Eldon, it was in his time so firmly established, that this great Judge felt himself bound, contrary to his own opinion, to give effect to it. But their broad contention was that there was no room or necessity for the interposition of the Court where the residuary bequest is to charity, and they sought in the reason of the rule the grounds for supporting this distinction. The rule, they said, was founded on the presumption that although the gift might be to a

particular charity, the intention was to give to charity generally, and the Court therefore, when the particular disposition could not be carried into effect, undertook to make a *cyprès* application of the fund in order that charity should not be disappointed. The reason of the presumption, it was said, being to prevent funds given to charity from falling to residuary legatees or next of kin, and so disappointing the general intention of charity, altogether failed, and left no foundation for the interposition of the Court where the bequest of the residue itself was to charity. Why, it was asked, should the Court interfere to intercept a fund falling into a residue devoted to charity, substituting its own discretion for the testator's?

The question thus raised does not seem to have been distinctly before the Courts in any of the previous decisions; but their Lordships, after fully considering the argument, are unable to perceive satisfactory grounds for such a limitation of the *cyprès* doctrine: certainly not as a limitation applicable generally to all cases in which the residuary bequest is to charity, whatever its kind and nature may be. The principle on which the doctrine rests appears to be, that the Court treats charity in the abstract as the substance of the gift, and the particular disposition as the mode, so that in the eye of the Court, the gift notwithstanding the particular disposition may not be capable of execution, subsists as a legacy which never fails, and cannot lapse.

This seems to be what Lord Eldon understood to be the effect of the decisions, from the following passage of his Judgment in Mills *v.* Farmer, as reported in 19 Ves. 466:—

"With regard to charity, therefore, without going through all the cases, which I examined with great diligence in Moggridge *v.* Thackwell, a case that, bound by precedent, I decided as much against my inclination as any act of my judicial life, I consider it now established, that although the mode in which a legacy is to take effect is in many cases with regard to an individual legatee considered as of the substance of the legacy, where a legacy is given so as to denote that charity is the legatee, the Court does not hold that the mode is of the substance of the legacy, but will effectuate the gift to charity, as the substance; providing a mode for *that legatee* to

take which is not provided for any other legatee." This passage is reported in somewhat different language, but substantially to the same effect, in 1 Mer. 99.

Nor can the suggested distinction, as a general qualification of the doctrine, be, in reason, maintained. Cases may be easily supposed where the charitable object of the residuary clause is so limited in its scope, or requires so small an amount to satisfy it, that it would be absurd to allow a large fund bequeathed to a particular charity to fall into it. If a large sum were given to endow a college, and the residue bequeathed for the support of three poor almswomen, or to provide coals at Christmas for ten poor persons, it would be manifestly absurd, supposing the *cyprès* doctrine be established at all, to withhold the application of it in instances of this kind. It cannot, therefore, in their Lordship's opinion, be laid down as a general principle that the *cyprès* doctrine is invariably displaced where the residuary bequest is to charity.

II. But it was next contended that, however this may be, the Court below was wrong in applying the *cyprès* doctrine to the Will in question. Undoubtedly the charitable establishments mentioned in the residuary bequest are of a comprehensive character, as well as prominent objects of the testator's bounty; and the argument of the Appellant's Counsel on this part of the case was strongly urged and has been carefully considered by their Lordships. The argument on this point really raises two distinct questions; (1) whether the *cyprès* doctrine is excluded; and (2) whether upon the construction of the Will there was a bequest over of the legacy, in case of failure of objects, to the Martinière charities.

On the first (in the discussion of which it must, of course, be assumed there was no bequest over, otherwise *cadit quæstio*) the argument was founded on the presumed intention of the testator to make the Martinière establishments the principal objects of his bounty, and to give them the benefit of all lapsed funds. There is certainly much to favour this presumption; but if it be granted for the sake of the argument that, looking at the whole Will, it is probable the testator, supposing he had thought about it at all, would have wished the bequest in question to

have gone to increase the funds of these establishments, can this conjecture of intention—and upon the hypothesis that the Will does not contain expressly or by implication a bequest over, it can be no more—exclude the operation of the doctrine? It seems to their Lordships that an answer in the negative is found in the explanation of the doctrine already given, and that on this point the contention of the Counsel for the Respondeut is supported both by principle and precedent. It was in effect that the Court, when deciding whether the *cyprès* doctrine applies, looks only to the particular gift, and if it finds charity to be the legatee, sustains the legacy as such, without regarding at this stage of the inquiry (whatever may be proper when a scheme comes to be framed) the rest of the Will.

This view of the doctrine appears to have been present to the minds of the learned Lords who took part in the decision of The Ironmongers' Company *v.* The Attorney-General (see 10th Cl. and Fin. 908), although the discussion in the House of Lords turned wholly on the propriety of the scheme for the distribution of the trust funds; it never having been doubted apparently that the doctrine itself was applicable. In the Will in that case the testator had divided the residue of his property between three charities, and the question arose upon a scheme for the appropriation of one of them, viz., the gift for redeeming British slaves in Barbary, which had failed for want of objects. It was held that, in applying the *cyprès* doctrine, the Court was to look primarily to the object of the charity which has failed, and was not bound to apply the funds which were set free in that case to the two other charities mentioned in the residuary clause of the Will. The Counsel, in arguing, is reported to have said: "The proper application of the doctrine of *cyprès* is, that you are to look to the objects of the testator, and to what comes near to those objects." To which Lord Cottenham replied: "No, *cyprès* means as near as possible to the object which has failed." Although this opinion was expressed with reference to a scheme for the distribution of the fund, it is clearly to be inferred that this would have been the consideration by which Lord Cottenham would have been guided in a case where he had to decide whether the doctrine applied at all. And upon

fully considering the operation as well as the principle of the rule, it is difficult to see that it could be otherwise. Their Lordships, therefore, are brought to the conclusion that the jurisdiction of the Court to act on the *cyprès* doctrine upon the failure of a specific charitable bequest arises whether the residue be given to charity or not, unless upon the construction of the Will a direction can be implied that the bequest, if it fails, should go to the residue.

The question remains whether such an implication arises upon this Will. It certainly cannot be inferred from the terms in which the respective gifts to poor prisoners in Calcutta and Lyons are bequeathed, that the testator had contemplated the failure of either of these charities, or had formed any intention in that case regarding them; on the contrary, the inference arises, upon comparing these clauses with the corresponding gift for the benefit of prisoners at Lucknow in which there is a direction that in the event of failure it shall remain to the estate, that he had not. If, then, an implication can be made, it must be from the residuary clause itself, construed with the other parts of the Will relating to the Martinière establishments. The frame of this clause is peculiar: "after the several payment of gift and others, as also the several establishment—if a surplus above ten lacs remain, that above surplus is to be divided in such a manner as to increase the three establishments." Assuming this to be a residuary disposition into which, in case of failure, legacies other than to charity would fall, yet, in considering the present question, the peculiar frame and language of it cannot be disregarded, and from these it may be inferred that what was present to the testator's mind, and what alone he intended to dispose of, was a residue after the funds for these charities had been provided and set apart. It seems, therefore, to their Lordships, that there is not such a necessary inference of intention to be found in the terms and provisions of the Will as is required to raise the implication of a bequest over by the testator of these legacies, upon the failure of the particular charities.

III. The third point argued at the Bar was that the Decrees already passed are judgments in his favour on the questions above discussed. What the Counsel

mainly relied on was a general declaration as to the surplus funds contained in the Decree of the 23rd February, 1832, which was left undisturbed on appeal (Record p. 76), and a disposition by a later Decree of the 31st August, 1840, of part of such surplus funds among the three Martinière establishments (Record p. 172).

It is to be observed that the judgment of the High Court does not notice this point, nor does it appear to have been insisted on below. But however this may have been, their Lordships cannot find anything in the Decrees referred to which decides the question. The declaration in the Decree of 1832 was to the effect that after setting aside sufficient funds for the various charitable and other purposes of the Will, the surplus, if amounting to ten lacs, should be at once divided between the three establishments, and if it fell short of ten lacs, should accumulate until it amounted to that sum, and be then divided. This is no more than an exposition of the Will with regard to the surplus, after provision had been made for the particular gifts. The Court did not then contemplate the failure of the gift in question, and could not have intended to make any declaration regarding it. The disposition referred to in the later Decree of 1840 was only a distribution of part of the surplus on the footing of the declaration in the Decree of 1832.

Reliance was placed by the Appellant's Counsel on some observations in the judgment of this Tribunal, delivered by Lord Brougham, in the former Appeal. A question had arisen whether the gift to found the establishment at Lucknow could in the circumstances of the country, be carried into effect. The Decree below, founded on reports of the master, declared the inability of the Court to give effect to that bequest, but the Court considering that the Governor-General had the means of doing so, had ordered the funds to be paid to the Government for that purpose. This Tribunal held that this part of the Decree was not warranted by the Master's Reports, and directed a further reference upon the facts. In stating the questions which arose, Lord Brougham made the observations relied on :—"Can the Decree as to the application of the fund stand ?—Shall the fund be applied to the establishment and support of a college at Lucknow ?—Shall it sink into the residue and be divided between the two

charities appointed to be established at Calcutta and at Lyons?—for the cases of Attorney-General *v.* Bishop of Llandaff, and Attorney-General *v.* Ironmongers' Company, make it clear that in this case, which is indeed stronger than either of those, the other two charities must take, if the gift fails as regards the third." It is obvious that the question of the ultimate disposition of the fund was not ripe for decision, the point then under consideration being the directions proper to be given for carrying into effect, if possible, the Lucknow Charity; and, indeed, the Decree advised by this Committee, giving directions for that object, was expressly made "without prejudice to any question as to the final application of the same fund under the directions hereinafter contained or otherwise." The observations in the judgment, therefore, can only be regarded as an opinion, and not as a judgment. So regarded, however, they would have been entitled to great weight, if their authority had remained unimpeached. But the subsequent decision in the case of the Attorney-General *v.* the Ironmongers' Company in the House of Lords, in which Lord Brougham concurred, corrected the views his Lordship had expressed in an earlier stage of that case (see 2 Mylne and Keen 586), and in the observations referred to. That decision was in effect that among charities there was nothing analogous to benefit of survivorship.

It was lastly submitted by the Appellant's Counsel, that if a *cyprès* application was admissible, the actual scheme which excluded the Lyons Charity from participation in the fund is an improper one. The High Court held, and, as their Lordships think, rightly, that it was not competent for the Appellants, under their present Petition, which is confined to the claim of a share of the residue, as residuary legatees, to open the scheme. But with a view to prevent further litigation and expense, the Judges expressed an opinion that if it was proper to reform the scheme at all, it might be right to confine it to charitable objects in the city of Calcutta, excluding both Lucknow and Lyons. Their Lordships have been invited to correct this view, and to declare that the Lyons Charity ought not to be excluded.

Agreeing with what was said in the House of

Lords, in the case of the Ironmongers' Company, as to the care and circumspection to be exercised by a Court of Appeal in substituting its discretion for that of the Court below, their Lordships would be reluctant in any case to interfere with a scheme unless it were plainly wrong, and still more to unsettle, by a premature declaration, one which is not regularly before them. Besides, bearing in mind the opinions expressed in the House of Lords, so often referred to, they are not satisfied, as at present advised, that the view of the High Court does not accord with them. The sum of these opinions appears to be, that whilst regard may be had to the other objects of the testator's bounty in constructing a scheme, primary consideration is to be given to the gift which has failed, and to a search for objects akin to it. If this be the rule, may not the gift to poor prisoners in Calcutta be considered to have a local character; and in that case, may not a scheme properly framed for the benefit of other poor persons in Calcutta be supported, as being *cyprès* to the original purpose. And if these questions are capable of being answered in the affirmative, it follows that it would not be a valid objection to the present scheme that it gives no part of the funds to Lyons. The contention upon this point, then, appears to come to this, that the inclination of the testator to benefit the Martinière institutions so strongly appears, that it ought to guide the Court in framing a scheme, in preference to the principle of selecting an object near to that which has failed. Opinions may well differ on such a point. Reasons are not wanting in favour of the Appellant's contention; but, on the other hand, much may be said in favour of the view that these gifts to poor prisoners bear the character of a charity for the relief of misery in the particular locality. The necessary funds for them were directed by the Will to be set apart, and in the case of the Lyons Charity were, long ago, paid over to the municipal authorities of that city. It may well be doubted whether if such a contingency as the failure of the gift to Lyons should occur, it would be thought proper that any part of the funds paid over to the authorities there should be restored to India.

Their Lordships are not now called upon to

decide whether the application of the gift which has failed to the relief of criminal prisoners, and the transfer of part of it to Lucknow, are proper, or the best possible disposition of the fund. All they need say about the actual scheme is, that they do not feel justified upon the present appeal in declaring, as they are invited to do, that it is necessarily bad, because no part of the fund has been appropriated to the Lyons Charity.

In the result, their Lordships will humbly advise Her Majesty to affirm the Decree of the High Court, and to dismiss this Appeal with costs.

PRINTED AT THE FOREIGN OFFICE BY T. HARRISON.—9/2/76.