

The wish expressed in the fifth item of the will that the legacy, if not needed by the legatee, be given to the worthy poor, created a charitable trust. *Trustees of Pembroke Academy v. School District*, 75 N. H. 408, and cases cited. A trustee should be appointed.

The same situation exists as to the gift to Dr. Klopsch.

While future doubts as to the correct administration of some or all of these charities may arise, they will not concern the executor. His duties will cease upon payment to the duly constituted trustees. Whatever difficulties they may have will be settled in proceedings brought by them. *Haynes v. Carr*, 70 N. H. 463.

Upon the facts reported it appears with sufficient certainty that the "Home Missionary Society" named in the will was the society of that name formerly existing in the church attended by the decedent. Although this name was abandoned four years before the will was executed, the home missionary work in the church was continued by the successor society. No suggestion has been made of any other society which the testatrix could have had in mind. The residue of the estate goes to the Woman's society of the First Congregational church in Keene.

Case discharged.

All concurred.

Coös, }
May 1, 1934. }

WILFRED VIDAL, *Adm'r v. ERROL.*

Matthew J. Ryan (by brief and orally), for the plaintiff.

Irving A. Hinkley (by brief and orally), for the defendant.

Per Curiam. The form of proceeding adopted by the presiding justice was accepted by both parties without objection. In *State v. Corron*, 73 N. H. 434, 462, involving similar procedure, it was said that there was "in substance a trial,—the facts being ascertained from the statements of counsel conceded to be correct, instead of from the testimony of witnesses." It does not appear here that the statements made were conceded to be correct, but that feature is immaterial, if the parties elect to rest upon such method of proof. Having elected to submit the cause in this way, it is too late to object to the form of procedure after an adverse verdict. *Morin v. Insurance Co.*, 85 N. H. 471, 472, and cases cited.

It is also claimed that it is essential that it be found that justice requires the order made, and that there was no such finding. The order was general, and the brief statement in the transferred case does not purport to recite all that was found as a basis for the order. There was no request that the facts be found. "There is no presumption that special findings reported include all the findings made. It must affirmatively appear that they do before the question whether they are sufficient to sustain the general verdict or order can be considered. *Spaulding v. Mayo*, 81 N. H. 85." *LaMarre v. LaMarre*, 84 N. H. 553.

Exception overruled.