

Aborigines Lose In Will Case

Melbourne. —

The Aborigines of Victoria have lost a proposed holiday hostel in Pine Avenue, Elwood — because the woman who bequeathed her property to them was not explicit enough in her will.

Miss Agnus Margherita Barry, aged 58, died in February, 1967, leaving her property to "be used by the Aborigines as a holiday hostel run by an organisation for their welfare."

In May, 1969, Mr. Justice Gillard ruled that the term "the Aborigines" in Miss Barry's will meant full-blood Aborigines.

He had been asked by the Public Trustee to rule on whether Miss Barry's will showed a general charitable intention and whether it was a practicable gift.

The judge gave no reason for his definition of "Aborigines" in his judgment. He referred the matter to a Master of the Supreme Court for an inquiry into whether the bequest, when applied to full-blood Aborigines, was practicable.

In April this year, Master Jacobs reported that the bequest was not practicable as a holiday home

for the sole use of full-blood Aborigines.

Later that month, Mr. Justice Gillard said this meant Miss Barry's gift must fail.

"I come to this conclusion with no general sense of satisfaction, but having regard to the inelegance of the term of the will, and doing the best I can to understand what the testatrix meant, I think it is the only conclusion I can come to," he said.

The judge ruled that the property should revert to Miss Barry's next-of-kin.

The Attorney - General, who sometimes represents charities in court cases, took the case on appeal to the Full Court of the Supreme Court.

Mr. R. K. Todd, appearing for the Attorney-General, argued that Miss Barry had shown a general charitable intention in her will. He also said Miss Barry may not necessarily have meant full-blood Aborigines in her reference to "the Aborigines."

Mr. Todd told the Chief Justice, Sir Henry Winneke, and Justices Little and Gowans, who heard the appeal, that there may be no full-blood Aborigines in Victoria,

and at the most only four or five.

The Full Court, in its judgment yesterday, said Mr. Justice Gillard's definition of "Aborigines" could not now be challenged. The judges upheld Mr. Justice Gillard's decision that this meant Miss Barry's bequest was of a particular nature — and not a general charitable nature.

They confirmed the order that the property should revert to Miss Barry's next of kin. The property is now only a vacant allotment, sandwiched between blocks of flats, following a fire which destroyed the home in September, 1967.

It is valued at \$16,000. The Minister for Aboriginal Affairs, Mr. Wentworth, on Thursday told Federal Parliament how his department defined an Aborigine.

He said: "We define an Aborigine as somebody who is wholly or partly of Aboriginal blood, who himself claims to be an Aborigine and who is accepted as such in the community with which he is associated."

"I believe that this is the best definition we can get. But the operative section is 'claims to be an Aborigine'." — A.U.P.