mony is available, even to the very limited extent to which it is competent in examining arbitration proceedings. It follows, in my opinion, that the pursuers have stated no relevant case in support of the second conclusion.

Nor is their case for the third conclusion any stronger. Indeed, it is open to all the objections just mentioned, and to this additional one, that it is premature, seeing the compearing defenders have given no intimation of their intention to work the rock in the lands acquired by the pursuers. It seeks to have the defenders ordained to grant them a discharge of all claims in respect of the whinstone rock on the ground that the pursuers have already paid them the full value of the whinstone. This is substantially the same claim over again, though in a different form, and I think it must be dealt with in the same way.

For these reasons I think the interlocutor reclaimed against is right and should be affirmed.

LORD M'LAREN—I concur.

LORD KINNEAR—I concur, and I also agree that if the question whether the whinstone in dispute were excepted from the conveyance by force of the provision as to mines and minerals in the 70th section of the Railways Clauses Act were open, I should think it one of considerable difficulty, but I agree that it is not open and that we are bound by authority.

LORD PRESIDENT—I concur in the opinion just delivered as regards what may be called the special point in this case. I think it is impossible to spell with certainty out of the documents which are still left what was precisely decided in the arbitration. That a mention was made of rock value seems clear enough. But then whether that rock value represented rock value *a coelo usque ad centrum*, or was merely the rock value of the surface, I cannot tell. And I cannot tell what the arbiter did, because the eventual award being a slump sum and the oversman being dead, I cannot tell with certainty what he allowed and what he did not allow. In that state of uncertainty it seems to me that we must go by the conveyance, that is to say—when I can learn no more from the oversman—I think we must assume that the conveyance was a proper implement of the bargain which had been come to, and been carried into effect by means of the arbitration.

Then if it comes to a question of the interpretation of the conveyance—there I feel that I am shut up by authority. I do not disguise, for my own part, that if the matter were open, I think there are grave reasons against holding that rock of this sort is mineral in the sense of the statute; but the matter is not open to me. In the first place, I think we are obviously bound by the recent decision of the Second Division, because I think it is hopeless to say that there is any distinction between whinstone and sandstone. There is no ground for importing into the statutes what may be called geological distinctions as to different sorts of stone. And then, if you take the only other thing which discriminates one stone from another, as far as I know, namely, commercial value, although the value may be different, yet here there is a commercial value in whinstone as well as in freestone.

But what I feel is this, that this Court is not in the position to clear the law if it is to be cleared. We are bound hand and foot by various judgments of the House of Lords, and it really is for the House of Lords, and the House of Lords alone, to further explain the statute if such explanation is possible.

The Court adhered.

Counsel for Pursuers (Reclaimers)—Clyde, K.C.—Cooper, K.C.—Hon. W. Watson Agents—Millar, Robson, & M'Lean, W.S.

Counsel for Defenders (Respondents)—Dean of Faculty (Dickson, K.C.)—Constable, K.C.—Macmillan. Agent—John Stewart, S.S.C.

Tuesday, February 2.

FIRST DIVISION.

PATERSON'S TRUSTEES *v.* PATERSON AND OTHERS.

Charitable and Educational Trusts—Uncertainty—"Charities or Benevolent or Beneficent Institutions."

A testatrix directed her trustees to pay certain legacies, one being to the Western Infirmary, Glasgow, and to divide the residue "among such charities or benevolent or beneficent institutions (including the Western Infirmary) as they in their sole discretion shall think proper, and in such proportions as they may think proper."

Held that the bequest was to be construed as a bequest in favour of charitable objects, the epithets "benevolent or beneficent" being merely exegetical, and was not void from uncertainty.

Hay's Trustees v. *Baillie*, 1908 S.C. 1224, 45 S.L.R. 908, *followed*.

Thomas Paterson and others, the trustees of the deceased Helen Paterson, who resided latterly at 119 North Montrose Street, Glasgow, acting under and in virtue of her trust-disposition and settlement dated 22nd June 1903 (*first parties*), and Thomas Paterson, John Paterson, Alexander C. Paterson, and Mrs Janet Paterson or Johnston, the brothers and sister respectively of the said Helen Paterson, and Hugh Miller and Thomas Miller, the only children of Mrs Paterson or Miller, who was a sister of and predeceased Helen Paterson, being all the heirs in moveables of the said Helen Paterson (with the exception of a brother whose address was unknown) (*second parties*), brought a Special Case to determine the validity of her disposal of the residue of her estate.

By her trust-disposition and settlement the testatrix conveyed to her trustees her whole estate for certain purposes. She directed the payment of certain legacies, including "to the Western Infirmary of Glasgow the sum of two hundred pounds." The last purpose was as follows—"(Fifth) I direct my trustees, after implement of the foregoing legacies, to divide the whole residue of my said whole means and estate among such charities or benevolent or beneficent institutions (including the Western Infirmary) as they in their sole discretion shall think proper, and in such proportions as they may think advisable. . . ."

The second parties contended that the clause in the trust-disposition and settlement disposing of the residue was too vague and indefinite to receive effect, and further, was void in respect that the beneficiaries sought to be benefited could not with reasonable certainty be ascertained.

The first parties maintained that the power conferred upon them under the said trust-disposition and settlement to divide the residue among such charities or benevolent or beneficent institutions (including the Western Infirmary) as they in their sole discretion should think proper, and in such proportions as they might think advisable, was validly conferred, and that the said provision was not void from uncertainty.

The *questions of law* for the opinion and judgment of the Court were—"(1) Is the fifth clause of the trust-disposition and settlement of the deceased sufficiently definite to receive effect, and are the first parties entitled to distribute the residue of the estate in terms of it? or (2) Does the residue of the testatrix's means and estate fall to be disposed of as intestate estate?"

Argued for the first parties—The bequest was good. The case was ruled by *Hay's Trustees* v. *Baillie*, 1908 S.C. 1224, 45 S.L.R. 908. Charities meant charitable institutions. "Charitable institutions" was good—*Dick's Trustees* v. *Dick*, 1907 S.C. 953, 44 S.L.R. 680; "benevolent or charitable" was good (*Hay's Trustees*); the addition of the words "or beneficent" made no difference—they were merely exegetical; an instance of the class to be benefited was supplied by the testatrix. The only requisites for such a bequest were that a particular class or particular classes to be benefited should be indicated—*Crichton* v. *Grierson*, July 25, 1828, 3 W. & S. 329, Lord Chancellor Lyndhurst at 338; and that the description of the class to be benefited should be sufficiently certain to enable men of common sense to carry out the expressed wishes of the testator—*Weir* v. *Crum Brown*, 1908 S.C. (H.L.) 3, Lord Chancellor Loreburn at p. 4, 45 S.L.R. 335, referred to in *Allan's Executor* v. *Allan*, 1908 S.C. 807, Lord Kinnear at 814, 45 S.L.R. 579. Even if "benevolent or beneficent" were not co-extensive with "charitable," but indicated separate classes, the words were so nearly akin to it that they should receive the same benignant construction—*in re Macduff*, [1896] 2 Ch. 451; *Weir* v. *Crum Brown* (*cit. sup.*); *Grimond or Macintyre* v. *Grimond's Trustee*, March 6, 1905, 7 F. (H.L.) 90, 42 S.L.R. 466; *Blair* v. *Duncan*, December 17, 1901, 4 F. (H.L.) 1, 39 S.L.R. 212; *Miller and Others* v. *Black's Trustees*, July 14, 1837, 2 S. & M'L. 866, Lord Brougham at p. 891.

Argued for the second parties—There were three classes here indicated by the testatrix, and she had given her trustees the option of selecting which should benefit. The case of *Hay's Trustees* v. *Baillie* (*cit. sup.*) was not applicable. In the present case there were two substantives, charities and institutions, two adjectives being applied to the latter. As to "benevolent," it had been construed as not equivalent to charitable, and not entitled to a benignant construction in *Morice* v. *The Bishop of Durham*, 1804, 9 Ves. 399, and philanthropic had been similarly treated *in re Macduff* (*cit. sup.*). As to "beneficent," if it meant anything different from benevolent, it meant "useful," and that was regarded by Lord Trayner in *Cobb* v. *Cobb's Trustees*, March 9, 1894, 21 R. 638, 31 S.L.R. 506, as too vague.

LORD PRESIDENT—The question raised in this case is whether the direction to the trustees to divide the "residue of my said whole means and estate among such charities or benevolent or beneficent institutions—including the Western Infirmary—as they in their sole discretion shall think proper, and in such proportions as they may think advisable," is or is not bad from uncertainty. There have been so many cases—and these cases so recent—on this branch of law that I think it is quite unnecessary to trouble your Lordships by going through the cases again and narrating the principles that have guided the Court in such matters. Put in a single sentence, all that is required to make such a bequest good is that a definite class to be benefited shall be indicated, and—quoting from the Lord Chancellor's opinion in one of the most recent cases in the House of Lords—*Weir* v. *Crum Brown*, 1908 S.C. (H.L.) 3—that the "description of the class to be benefited shall be sufficiently certain to enable men of common sense to carry out the expressed wishes of the testator."

Now in the recent case of *Hay's Trustees* v. *Baillie*, 1908 S.C. 1224, we had a judgment of this Division where a bequest was held to be good to "such societies or institutions of a benevolent or charitable nature" as the trustees in their own discretion should think proper. The only distinction that can be drawn between that case and this is that there the words "benevolent" and "charitable" were used adjectively and were appended to one substantive—viz., "societies"—while here there is, first, the substantive "charities," and then, connected by the conjunction "or," the words, "benevolent or beneficent institutions." I do not think that that makes any difference. I do not think that there was here meant to be a discrimination between separate classes of objects, in which case it might have been possible to argue that, although "charities" as a class were sufficiently defined to satisfy the rule, yet the separate class of "benevolent or

beneficent institutions" was so vague as to fall within the same category as "religious" or "public" institutions, which have been held too indefinite to receive effect. I do not think that in the ordinary use of language we ever speak of "benevolent or beneficent institutions." But reading this clause as a whole, I think one is led to the conclusion that the testatrix was thinking of only one class of objects which she desired to benefit, and that she described that class by three epithets, viz., charitable, benevolent, and beneficent.

On the whole matter, therefore, I think that there is no proper distinction between this case and the case of *Hay's Trustees*, 1908 S.C. 1224, and, accordingly, that the questions will fall to be answered, the first in the affirmative, and the second in the negative.

LORD M'LAREN—My opinion in this case is the same as the opinion I delivered in *Hay's Trustees*, 1908 S.C. 1224. Of course it might be that two testators should use identical expressions in the words of gift, and yet there might be something in the context of one or other of the wills to show that the expressions were not really used in the same sense; and I have fully in view that in such circumstances no decision with regard to one will can be a binding authority for the construction of another will. But I am unable to find anything in the context of this will to distinguish it from the case we had to deal with in *Hay's Trustees*. I think that the word "beneficent" really adds nothing to the force of the word "benevolent," and that the disjunctive particle—which is used in both instances—is used to show that the two things were really, for practical purposes, synonymous; that the class to be benefited was the class of benevolent "or, if you prefer the expression, beneficent," institutions. I find nothing in the context here that throws any light on the class of objects to be benefited that would point to an interpretation of the language used different from the ordinary significance of the words. I therefore agree with your Lordship that there is here a clear designation of a class, and a class that the Court has always favoured—viz., charitable institutions—and therefore I hold that the first question falls to be answered in the affirmative.

LORD KINNEAR—I am of the same opinion. So far as this involves a question of law, I think it is covered by the doctrine laid down by the Lord Chancellor in *Weir* v. *Crum Brown*, 1908 S.C. (H.L.) 3. So far as it depends on the construction of this particular will—which, as Lord M'Laren has pointed out, must be interpreted by its own terms—I do not think that the testatrix here had in her mind three distinct and separate kinds of objects which she intended to benefit—first, charitable objects; second, benevolent objects; and third, beneficent objects; but that she had in her mind only one kind of objects—viz., charitable objects—and that the other words are merely used as exegetical of the earlier words.

LORD PEARSON—I agree.

The Court answered the first question in the affirmative, and the second question in the negative.

Counsel for the First Parties—Munro. Agents—Bryson & Grant, S.S.C.

Counsel for the Second Parties—W. T. Watson. Agents—M. J. Brown, Son, & Company, S.S.C.

Friday, February 5.

SECOND DIVISION.

[Sheriff Court at Airdrie.

ROBERT ADDIE & SONS, LIMITED *v.* COAKLEY.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, c.* 58), *Sched. II, 9—Process—Sheriff—Appeal—Competency—Recording of Agreement—Special Warrant—Judicial or Ministerial—A.S., June 26th* 1907, *secs.* 11 (1) *and* 12.

The Workmen's Compensation Act 1906, Sched. II (9), provides that when compensation is ascertained by agreement a memorandum thereof shall be sent in manner prescribed by Act of Sederunt to the sheriff-clerk, who shall, on being satisfied as to its genuineness, record the same, provided that where the recording is objected to on certain grounds the memorandum shall only be recorded, if at all, on such terms as the Sheriff thinks just. The relative Act of Sederunt provides that when the genuineness of a memorandum is disputed, or when the recording is objected to under the proviso of the schedule, a minute shall be lodged stating the grounds of such dispute or objection, and the memorandum shall thereupon be dealt with as if it were an application to the Sheriff for settlement by arbitration of the questions raised by the minute.

Held that the Sheriff, in granting special warrant to record a memorandum of agreement, the genuineness of which was disputed, was acting in a judicial and not a ministerial capacity, and that appeal by way of stated case was therefore competent.

Binning v. *Easton & Sons*, January 18, 1906, 8 F. 407, 43 S.L.R. 312, *distinguished.*

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, c.* 58), *Sched. II, sec.* 9—*Memorandum of Agreement—Genuineness—Recording—Recovery of Workman before Memorandum Lodged.*

The Workmen's Compensation Act 1906, Sched. II (9), provides that when the amount of compensation has been ascertained by agreement, a memorandum thereof shall be sent to the sheriff-clerk, who shall, on being satisfied as to its genuineness, record the same.