surplus income, which the Act sets free from the direction to accumulate, to any person whatever. There is no gift of income to any person whatever except the annuitants, and no gift of the residue to anybody until the death of the last annuitant. The right of the Infirmary to take the residue remaining in the hands of the trustees at the death of the last annuitant is not accelerated, according to the rule settled by the decisions, by the operation of the Thellusson Act; it remains exactly what it was before. And that being so, as I can find no gift of the income arising between the date when the twenty-one years came to an end and the death of the last annuitant, that income being undisposed of falls into intestacy. I entirely agree that if there had been a gift of the residue in the larger sense by which a testator gives to a residuary legatee his whole estate subject to certain purposes, some of which may have failed, the accumulations which are rendered illegal by the Act would simply have been money directed to be devoted to purposes which have failed, and having failed would fall within the residuary gift. But then that rule cannot be applicable to a bequest which, although it uses the word "residuary," defines the estate which the so-called residuary legatee is to take by reference to the position of the funds in the trustees' hands at a specific date. What is given in name of residue are the surplus revenue and the remainder of the estate in the hands of the trustees after the death of the last survivor of the annuitants, and after the sale and realisation of the heritable and moveable estate in their possession. That is what is given to the residuary legatee and nothing more. Now the testator begins by saying "accumulate until that event," and if you apply to that direction the rule of the Thellusson Act, it comes to be exactly the same as if he had said "accumulate income for twenty-one years, and on the death of the last annuitant, and not sooner, give the estate to the legatee." If the will had been so expressed it would have been clear enough that the testator had failed to provide for application of the surplus income between the date when the twenty-one years came to an end and the earliest date when the money could be divided in accordance with the will. I think with your Lordship that the case of *Weatherall* v. *Thornburgh*, 8 C. D. 261, is directly in point, and that we should follow it.

LORD PEARSON—I also agree with your Lordship.

LORD M'LAREN was absent.

The Court adhered.

Counsel for Claimants (Reclaimers) The Glasgow Royal Infirmary — Macphail — Moncrieff. Agents—Webster, Will, & Company, S.S.C.

Counsel for Claimants (Respondents) the Heirs *ab intestato*—Hunter, K.C.—D. Anderson. Agents—Dove, Lockhart, & Smart, S.S.C.

Wednesday, July 7.

SECOND DIVISION.

TRANENT MINISTER AND ANOTHER *v.* TRANENT HERITORS.

Church—Glebe—Mines and Minerals—Sale of Minerals for Lump Sum.

A offered to buy for a lump sum from the minister of a parish the coal lying under the glebe thereof. The proposed sale was approved by the heritors of the parish subject to the validity thereof being determined by the Court, and it was sanctioned by the presbytery of the bounds. The sum realised from the sale of the said coal was to be invested at the sight of the presbytery and heritors, and the proceeds only of the investment was to be paid to the minister and his successors in the benefice.

Held that the proposed sale was competent and that in the event of its being concluded the price obtained fell to be invested for behoof of the minister and his successors in the benefice.

The Rev. A. M. Hewat, B.D., minister of the parish of Tranent, *first party*; J. R. Wilson, coalmaster, Musselburgh, *second party*; and the heritors of the parish of Tranent, *third parties*, presented a Special Case, the subject-matter being the coal in the glebe of the parish of Tranent.

The case stated—"2. Coal exists in or under that portion of the glebe lands known as the 'west glebe,' lying adjacent to the estates of Bank Park and Bankton, and extending to seven and two-thirds acres or thereby. The amount of said coal is too small to admit of its being profitably worked as a separate venture. The only possible method of having the same worked is by some adjacent coalowner or lessee, having a larger field and pit sinkings of his own. The said coal can be worked out completely in a few years.

"3. In August 1902 a lease of the coal of said glebe lands was granted by the Reverend William Cæsar, Doctor in Divinity, then minister of the parish of Tranent, in the presbytery and county of Haddington, with the consent and approval of the heritors of said parish and the presbytery of Haddington, to the Forth Collieries, Limited, incorporated under the Companies Acts 1862 to 1898; but, in virtue of a break in said lease, it was relinquished in 1907 by the said Forth Collieries Limited.

"4. After the relinquishment of said lease, the party of the second part, who is an adjacent coalowner, made an offer to the party of the first part to lease said coal, which offer, on being laid before the heritors, was rejected. The party of the second part thereupon entered into negotiations with the party of the first part with a view to the sale of said coal to him, and by arrangement a report was obtained as to their value from Mr John Gemmell, mining engineer, Edinburgh, on 7th August 1908. Mr Gemmell reported that the present

market or selling value of the coal in said glebe lands was £1165, and that 'if the coal is sold the purchaser should be granted the seller's rights to work, win, raise, and carry away the same, and to lower the surface of the ground on paying or settling all damage of every kind caused by his operations, and keeping the proprietors of the glebe scaithless of all claims that may be made upon them in connection therewith—the purchaser not to be liable for damage done to houses or buildings that may be erected on the glebe unless such damage is caused by operations carried on by him subsequent to the first twenty years.' The parties of the first and third parts are of opinion that said report is independent and accurate, and that the said sum of £1165 is the fair value of said coal.

"5. The party of the second part, after considering the said report, on 12th August 1908 offered to purchase the coal in the said west glebe lands, extending to seven and two-thirds acres, for the sum of £1165, upon the terms and conditions stated in the valuation made by Mr Gemmell, the price to be paid on delivery of a valid title and a clear search. . . .

"6. The offer by the party of the second part to purchase said coal was laid before the parties of the third part on 19th September 1908, who approved of the party of the first part selling the minerals to the party of the second part, in terms of the valuation and the report, subject to the validity of said sale being judicially determined. Said offer and the documents relating thereto were thereafter laid before the presbytery of Haddington, and, at the meeting of said presbytery on 27th October 1908, on a report of a committee, the sanction of the presbytery was given to the proposed sale of the coal by the party of the first part, and to any proceedings which might be necessary in connection therewith. It is proposed that the sum realised from the sale of said coal should be invested at the sight of the said presbytery of Haddington and the parties of the third part, and that the annual interest or proceeds thereof should be made payable to the party of the first part and his successors in office. . . ."

The *questions of law* were—"(1) Whether the proposed sale of the coal lying in the said glebe lands of the parish of Tranent is legal, and may be carried out by private bargain? (2) Whether, in the event of the sale being concluded, the said sum of £1165 falls to be invested at the sight of the said presbytery and the parties of the third part, the interests and proceeds to be paid to the party of the first part and his successors in office."

Argued for the first party — Minerals under glebe lands might be of very considerable value, and there was no reason why they should not be abstracted, if it could be done without injuring the agricultural value of the glebe. Though there was no case absolutely on all fours with the present, a lease of minerals under a glebe had been held to be competent — *Galbraith* v. *Minister of Bo'ness*, October 27, 1893, 21 R. 30, 31 S.L.R. 25. A lease of minerals was just a gradual sale. No doubt a minister could not appropriate any part of the *solum* of the glebe to the prejudice of his successors, but his beneficial interest in the glebe was not limited to its annual natural fruits — *Mercer* v. *Minister of Lethendy*, 1794, referred to in *Minister of Newton* v. *The Heritors*, 1807, M. *voce* Glebe, App. No. 6; Duncan's Parochial Ecclesiastical Law (Johnston's Edit.) p. 477. The minister could work the minerals of the glebe—*Minister* v. *Heritors of Newton*, *cit.* He had also been found entitled to dig peats from the glebe for the use of his family — *Mercer* v. *Minister of Lethendy* (*sup. cit.*)

Argued for the third parties — The only difficulty the heritors had was as to the form of the bargain. This was a sale. Sale of glebes was prohibited by Act of Parliament —Act 1572, cap. 48. Because a minister could lease the minerals under his glebe, was he by inference entitled to sell them? Minerals under the glebe were *partes soli*, and therefore could not be sold — Lord Monboddo in *Reay* v. *Falconer*, 1781, 2 Hailes, 890. The Glebe Lands (Scotland) Act 1866 (29 and 30 Vict. cap. 71) did not authorise sale.

Lord Low—There is no doubt that it is quite competent to let coal or minerals in a glebe provided that the yearly proceeds in the shape of rents and royalties are accumulated and invested. In that way the accumulated amount of the yearly payments comes in place of the minerals which have been removed, and the benefice is benefited by deriving income from what would otherwise be really of no benefit to the holders. In the present case the proposal is to sell the coal out and out for a lump sum instead of letting it, the price obtained being invested for the benefit of the benefice and coming in place of the minerals. The objection suggested to that course is that it is contrary to law for the holder of a benefice to alienate the glebe or any part of it, the reason for that rule being found in the fact that his doing so would prejudice his successors. No doubt that rule of law made it necessary, when it was proposed to sell the minerals for a lump sum, to see that the proposal, if carried out, would not in any way prejudice the benefice. But if it is found that it is the best arrangement that can be made in the interests of the benefice, I can see no reason why the Court should not sanction it, because it is not an alienation of the kind which is struck at by the statute against alienation. Here the minerals in the glebe are of comparatively small amount, and there is only one person who is in a position to acquire or work them, viz. — a neighbouring coal-owner, and all the parties interested—the minister, the Presbytery, and the heritors — are agreed that the most advantageous way of making the value of the minerals available is to accept the neighbouring coal-owner's offer to purchase them at a price.

A report has been obtained from a gentleman of high standing as a mining engineer and he reports that the price suggested, viz.—£1165, is a fair one. I have therefore no doubt that the proposed sale is in the interests of all concerned, and I accordingly suggest to your Lordship that we should sanction it and answer the questions stated in the case in the affirmative.

LORD ARDWALL and LORD DUNDAS concurred.

The LORD JUSTICE-CLERK was absent.

The Court answered the questions of law in the affirmative.

Counsel for the First Party — Ingram. Agents — Adamson, Gulland, & Stewart, S.S.C.

Counsel for the Second Party—Ingram. Agents—Mackenzie & Fortune, S.S.C.

Counsel for the Third Parties — J. A. Christie. Agents — Lister Shand & Lindsay, S.S.C.

Wednesday, July 7.

SECOND DIVISION.

BERTRAM'S TRUSTEES *v.* BERTRAMS.

Trust—Inter vivos Disposition—Power to Revoke.

By deed of trust A made over to trustees certain moveable estate for the following purposes, *inter alia*, payment of the annual income thereof to himself and upon his death to his widow, "declaring that the said provisions in favor of me and my widow shall be for my and her respective liferent alimentary use allenarly, and shall not be affectable by my or her debts or deeds or by the diligence of my or her creditors." He further directed his trustees to hold the capital of the said trust estate for behoof of his lawful issue, and "in the event of there being no lawful issue who shall acquire a vested right to the capital of the said trust estate . . . my trustees, upon the death of the survivor of me and my widow, shall assign, dispone, convey and make over (First) one half of the capital of the said trust estate to my brother" B "and to his heirs and assignees whomsoever; and (Second) the other one-half to" C, "my stepsister, and to her heirs and assignees whomsoever." There was no declaration that the deed of trust was to be irrevocable. Thereafter A, who had never married, called upon the trustees to denude themselves of the trust funds in his favour.

Held that the trust deed was revocable, and that the trustees were bound to denude in A's favour.

The trustees acting under a deed of trust dated 20th, and registered in the Books of Council and Session 23rd August 1907, granted by Norman Stewart Bertram, engineer, then residing at 71 West Cumberland Street, Glasgow, and afterwards in London, *first parties;* the said Norman Stewart Bertram, *second party;* David Stanley Bertram, the second party's brother, *third party;* Dorys Jessie Bertram, the second party's step-sister, and her mother Mrs Hannah Isabella Chambers or Bertram, as her guardian and administrator-in-law, *fourth parties*, brought a Special Case with regard to the revocability of the said deed of trust.

The deed of trust provided—"I, Norman Stewart Bertram, engineer, seventy-one West Cumberland Street, Glasgow, considering that I have now received payment of my share of the estate falling to me under the antenuptial contract of marriage between my father and mother, amounting to over three thousand pounds, and that I consider it proper and prudent that a portion of the funds so received should be put in trust for the purposes after mentioned, therefore I do hereby assign, dispone, convey, and make over to and in favor of . . . as trustees . . . [*certain securities*] . . . making together at their present market value the sum of One thousand and seventy-four pounds, one shilling and elevenpence inclusive: But that in trust only for the ends, uses, and purposes, and with and under the powers, conditions, and declarations after mentioned:—(First) My trustees shall pay the expenses of executing this trust; (Second) My trustees shall during my lifetime pay to me during the whole days of my life the free annual income of the said trust estate before conveyed . . .; (Third) My trustees shall on my death pay to my widow, should I be married and be survived by her, so long as she shall remain my widow, the free annual income of the said trust estate before conveyed as aforesaid, declaring that the said provisions in favour of me and of my widow, shall be for my and her respective liferent alimentary use allenarly, and shall not be affectable by my or her debts or deeds, or by the diligence of my or her creditors; (Fourth) My trustees shall hold the capital of the said trust estate for behoof of my lawful issue, divisible between or amongst them, if more than one, in such shares and proportions as I shall appoint by any writing under my hand, and failing such apportionment then equally between or amongst such children; (Fifth) In the event of there being no lawful issue who shall acquire a vested right to the capital of the said trust estate under the provisions hereinafter written, my trustees, upon the death of the survivor of me and my widow, shall assign, dispone, convey and make over (First) one-half of the capital of the said trust estate to my brother, the said David Stanley Bertram, and to his heirs and assignees whomsoever; and (Second) the other one-half to Dorys Jessie Bertram, my step-sister, and to her heirs and assignees whomsoever. . . . [*The deed then dealt*