on the one hand under the will by these charitable institutions, and on the other hand by the heirs at law, and next of kin of the testator, as being residuary of his estate undisposed of under his will.

Held, affirming the judgment of the Supreme Court of New Brunswick, that the "surplus" had reference to the testator's personal estate, out of which the annuities and legacies were payable, and, therefore, a *pro rata* addition should be made to the three above named bequests, Statutes of Mortmain not being in force in New Brunswick.

Barker, Q. C., and *Sturdee*, for appellants.
Kaye, Q. C., and *Stockton*, for respondents.

COURT OF CHANCERY.

FULL COURT—APRIL 19.

ANDERSON V. BELL.

Will—Construction of—Distribution of estate—Accumulation—Per capita or per stirpes.

The testator bequeathed his residuary estate, all other property, in lands, mortgages, stocks, to his grandchildren, "the children of J. C., and of my daughter, A. J. B., wife of D. B., share and share alike, on their coming of the age of twenty-five years, to be finally determined and paid to them on the youngest coming of the age of twenty-five years. Provided, nevertheless, that each on coming of the age of twenty-five years receives a portion of not more than half what their share will be on the youngest coming of age. (Then directions were given as to keeping books of accounts and managing the estate). And when the books so audited show the revenue of my said estate, after paying the before mentioned bequests, taxes, and other charges on the same, amounts to £500, then half of such revenue or income be divided, share and share alike, between the families of my son, J. C., and the family of my daughter, A. J. B." (The other half going into the estate).

Held, (1) that the children referred to took *per capita*, and not *per stirpes*. (2), that when the eldest attained the age of twenty-five years he was entitled to receive one half of his share, payment of which could not be delayed, and that date must be taken as the period at which those to take were to be ascertained; and that any child born subsequent to the time the eldest child attained twenty-five was excluded; and all born before that period were entitled to share in the estate. (3), that the children did not take vested interests—the gift to each being contingent on the attaining of twenty-five. (4), that twenty-five was the age at which the parties became entitled to an arrangement as to the amount of their shares; and (5), that the trustees could charge the shares of any who had been overpaid with the excess of such payments.

April 22.

IN RE TRELEVEN & HORNER.

Vendors and Purchasers' Act—Description of lands conveyed—Assent to sale by tenant for life—Appointment of interested trustee—Practice.

A description of land in a deed, which refers to the same as part of a lot whose number is given, and which then goes on to say that the metes and bounds are more particularly set out in a deed, which is referred to by date, names of parties, date and number of registration, is a good description.

Land was settled on a trustee, in trust for the use of H. till marriage, and then upon other trusts for the husband and wife as tenants for life, and ultimately providing for the issue; the assent of the tenant for life was necessary for a sale; and there was power in the deed to appoint H. as a trustee on the original trustee's refusing etc., to act. The trustee had an absolute discretion as to forfeiting and applying the estate among or for the benefit of the parties to the deed in case of anticipation or attempted anticipation. The original trustee resigned and appointed H. and conveyed to him.

Held, that the consent of H. and his wife as tenants for life satisfied the condition as to the assent in case of a sale; that H. as trustee was entitled to receive the purchase money, and that the purchaser was not bound to see to its application.

But it having been suggested by the Court that the appointment of H. as trustee was not one which the Court would have made, the matter again came on for argument, when it was