BRITTON, J.:—John Cronin died on the 24th March, 1909. His will, dated the 19th November, 1908, contains the following clauses in reference to which the opinion and advice of the Court is asked:—

"(3) I direct that my said executors purchase a lot in St. Mary's cemetery, Kingston, that my body be buried therein, and that a sum sufficient be set aside and expended to provide for the perpetual care of my grave."

"(7) The rest and residue of my estate I leave to my said executors absolutely, to use as they deem best, trusting that they may spend the same upon some charitable object, or objects, but I leave their discretion absolutely unfettered as to this."

I am of opinion that the direction in clause 3 is valid, and that a sum reasonably sufficient for the purposes mentioned may be used and appropriatel by the executors out of the estate.

If the governing body of St. Mary's Cemetery, Kingston, undertake the "perpetual care of" graves within its limits, then the executors may pay to them such reasonable sum as may be required for such care of testator's grave.

A careful perusal of the will satisfies me that the testator did not intend to give the residue of his estate to the executors for their own use.

By clause 6 he bequeathed to each of the executors the sum of $100, "exclusive of their commission."

In clause 7 the words are, "I leave to my said executors absolutely, to use as they deem best, trusting," etc. It was not to be for the executors personally but to be used by them,—the testator "trusting," that is to say, hoping, expecting, believing that the executors would "spend the same upon some charitable object or objects," but as to what the object or objects would be, the discretion of the executors was to be absolutely unfettered.

The construction I place upon this clause is that the residue should be absolutely used upon and for some charitable object or objects.

No trust is created in favour of any particular charity, and so the gift of residue is not "a good charitable bequest," but is void for uncertainty.

The conclusion being reached that the executors do not take for their own use, In re Davidson, Minty v. Bourne, [1909] 1 Ch. 567, seems clear authority that the gift of the residue is void for uncertainty.

Costs of all parties out of the estate.