

tively. A summary application was made by the trustees for the opinion of the Court as to whether they were entitled to retain the surplus in question, to provide for a possible deficiency in future years; a possible deficiency being immediately possible. Sargant, J., held that, although by the terms of the gift, the annuity was not dependent on the amount of the income, but was cumulative so that the deficiencies in any one year would have to be made good out of the surplus of any succeeding year, that did not entitle the trustees to retain surplus income from past years to meet possible deficiencies in future years.

**WILL—CONSTRUCTION—TRUST FOR MAINTENANCE OF DAUGHTER  
—ACCUMULATION OF SURPLUS INCOME FOR TWENTY-ONE  
YEARS—SURPLUS INCOME AFTER TWENTY-ONE YEARS TO  
FALL INTO RESIDUE—THELLUSSON ACT (39-40 GEO. III.  
c. 98)—(R.S.O. c. 110).**

*In re Hawkins, White v. White* (1916) 2 Ch. 570. By the will in question in this case the testator bequeathed two sums of £10,000 to trustees on trust out of the income to provide for the maintenance of his two daughters, and he directed the surplus income of each sum to be accumulated for a period of twenty-one years after his death, and at the end of that period the accumulations were to fall into the residue as capital and be disposed of as such. This was a summary application to determine what was the legal effect of this disposition, and Sargant, J., held that the direction that the surplus should fall into the residue as capital was an attempt to accumulate beyond the period permitted, and therefore that this disposition was null and void under the Thellusson Act (see R.S.O. c. 110, s. 2), and the will must be read as if it contained no such disposition, and that being so the surplus income after the expiration of twenty-one years, and also the income of the accumulations made during the term, were not undisposed of, but were properly payable to the tenants for life of the residuary estate.