

EJECTMENT—DEPENDANT IN POSSESSION—INTERIM RECEIVER—
DISCRETION—JUDICATURE ACT 1873 (36-37 Vict. c. 66)
s. 25 (R.S.O. c. 56, s. 17).

Marshall v. Charteris (1920), 1 Ch. 520. This was an action of ejectment against a defendant in actual occupation in which the plaintiff made an interlocutory application for the appointment of a receiver of the rents and profits, and for an order requiring the defendant to give possession to the receiver. Eve, J., refused the motion, which he said was one "of a very unusual character."

POWER—POWER OF REVOCATION AND NEW APPOINTMENT "EXPRESSLY REFERRING TO POWER"—CONSENT OF TRUSTEES—
EXERCISE OF POWER BY WILL—"GIVE, DEVISE AND BEQUEATH
AND APPOINT."

In *Re Barker Knocker v. Vernon Jones* (1920), 1 Ch. 527. In this case a voluntary settlement was under consideration. By it the settlor settled a fund in trust for the settlor for life with remainder for other persons therein named. The settlement reserved a power to the settlor with the consent of the trustees by deed or will expressly referring to the power to revoke the trusts of the settlement and declare other trusts thereof for her own benefit. By deeds in 1906 and 1909 the settlor exercised this power as to two sums part of the settled fund. She died in 1918 having made a will without the consent of the trustees whereby she gave, devised, bequeathed and appointed all of her residuary estate, both real and personal to trustees for sale and conversion and declared trusts of the proceeds. Three questions were submitted to the judgment of the Court. (1) Was the consent of the trustees necessary to the execution of the power by will? This first point was not contested by the beneficiaries, and Sargant, J., who heard the case, decided that on the true construction of the settlement the consent of the trustees was only necessary to an execution of the power by deed. (2) Did the will "expressly refer" to the power within the meaning of the settlement. The learned Judge held that by the use of the word "appoint" that provision was sufficiently complied with, inasmuch as the testatrix had no other power than that contained in the settlement. (3) Whether the words used in the will were sufficient to effect a revocation and new appointment of the fund? And this question the learned Judge answered affirmatively. And he therefore held that the remaining balance of the settled fund passed under the appointment contained in the will.