

profit which would have been made had the proposed contract been carried out, and North, J., held that that was the proper measure of damages.

RECEIVER AND MANAGER OF TESTATOR'S BUSINESS—DEBTS INCURRED IN CARRYING ON BUSINESS—INDEMNITY—CREDITORS—TRADE MACHINERY—CONVEYANCE OF LAND, MENTIONING FIXTURES—BILL OF SALE.

*In re Brooke, Brooke v. Brooke*, (1894) 2 Ch. 600; 8 R. Sept. 103, was a contract between a creditor of a testator and a person who, after his decease, for a time carried on the testator's business as executor, and consequently had been appointed, in an administration action, receiver and manager, to carry on his business, the creditor claiming priority over the latter in right to indemnity against debts incurred in carrying on the business. The will did not expressly authorize the carrying on of the business; but Kekewich, J., was of opinion, on the authority of *Dows v. Gorton*, (1891) A.C. 190, that that fact made no difference, and that, as the creditor of the testator did not actively intervene to prevent the business from being carried on, it must be presumed to have been carried on with his assent, and the person carrying it on was, therefore, entitled to indemnity against debts so incurred. Another point in the case turned upon the construction of a conveyance of certain lands by way of mortgage. On the lands were certain trade fixtures, consisting of machinery, etc., affixed to the freehold, which were specifically mentioned in the mortgage, but the mortgage had not been registered as a bill of sale. The question was whether the mortgagee, under the circumstances, was entitled to the fixtures. Kekewich, J., on the authority of *In re Yates*, 38 Ch.D. 128, held that he was, being of opinion that the specification of fixtures, which would have passed under a conveyance of the land itself without any reference to the fixtures, did not differ the case from *Re Yates*, where the fixtures were not specified; but distinguished it from *Small v. National Provincial Bank*, (1894) 1 Ch. 686 (*ante* p. 498), where the fixtures were specified and the mortgage was expressed to cover not only fixtures, but also "movable" plant and machinery there or thereafter placed on the premises. Part of the fixtures in question had been sold, and it was alleged that out of the proceeds more fixtures had been placed on the mortgaged premises, and it was held that, although the mortgagees were entitled to the proceeds of the sale, yet that they were not also entitled to the fixtures which had been substituted.