

TRUSTEES—OPEN BRICKFIELD—IMPLIED POWER TO LET FROM YEAR TO YEAR—TENANT FOR LIFE AND REMAINDERMAN—ROYALTIES.

*In re North, Garton v. Cumberland* (1909) 1 Ch. 625. This was a summary application by trustees under a will for the purposes of determining the rights of beneficiaries. Part of the testator's consisted of an open brickfield which at the time of his death was being worked under a lease granted by him at a royalty. This was devised to the trustees upon trust "to pay the rents, issues and profits" to certain persons for their lives, with remainders over. The will contained a trust for sale on the death of the surviving tenant for life, and a direction that until sale the trustees should cause the real estate to be kept "in good and tenenable order and repair." The lease in existence at the testator's death expired in 1870 and thereafter the trustees let the field from year to year from 1871 to 1899 at a fixed minimum rent and royalties, and during this period they paid the minimum rent to the tenants for life, but accumulated the royalties, and retained them in their hands. The application was to determine the right to these royalties. On behalf of the remaindermen it was contended that the trustees had no power to lease, and that an application for leave to lease under the Settled Estates Act should have been made, in which case part of the royalties would have been ordered to be accumulated for the remaindermen. Eady, J., however held that the fact that the trustees were empowered to keep the real estate in good and tenenable repair gave them an implied power to lease the brickfield from year to year as they had done; but he held that according to the will the tenants for life were entitled to the rents, issues and profits and therefore they were entitled to all of the royalties which had been received and accumulated by the trustees.

WILL—TRUST FOR SALE—POWER TO POSTPONE—SHARE VESTED IN POSSESSION—RIGHT OF BENEFICIARY TO INSIST ON SALE.

*In re Horsnail, Womersley v. Horsnail* (1909) 1 Ch. 631. In this case land had been devised to trustees for sale, with a discretionary power of postponement, and the proceeds of the sale were settled in trust for various beneficiaries. The share of one of the beneficiaries had become vested in possession, and he claimed to be entitled to insist on the trustees proceeding to an immediate sale of the entirety, or to a conveyance of an undivided share in the land. But Eady, J., held that he had no such right.