

which should form part of his estate, should be treated as producing income. The testator also declared that the trustees might invest the trust representing the shares of his said two sons during their respective minorities in certain specified securities, and that the whole income of their shares should be paid to their guardian during their minorities for maintenance. Buckley, J., held that, notwithstanding the use of the word "appointed" in the will, the whole tenor of the will shewed that the testator was only dealing with his own property, and that the dispositions he had made were inconsistent with any intention to exercise the power of appointment and therefore that the will was not an exercise of the special power of appointment.

LANDLORD AND TENANT—COVENANT BY LANDLORD TO PAY RATES—COVENANT WITH LESSEE "HIS EXECUTORS, ADMINISTRATORS AND ASSIGNS"—UNDERLEASE—UNDERLESSEE NOT AN "ASSIGN"—32 HEN. VIII. c. 34, s. 2—(R.S.O. c. 330, s. 13).

In *South of England Dairies v. Baker* (1906) 2 Ch. 631 the plaintiffs were underlessees of certain premises for an unexpired term, and brought the action against the assignee of the reversion of the superior landlord, who had covenanted with the plaintiffs' lessor his "executors, administrators and assigns" to pay the rates assessed on the demised premises; for breach of the covenant, and Joyce, J., held that the action would not lie on the ground of want of privity, an underlessee not being an "assign" of the original lessee within 32 Hen. VIII. c. 34, s. 2 (R.S.O. c. 330, s. 13), and that there was no principle of equity by which the action could be maintained.

VENDOR AND PURCHASER—TITLE DEEDS—CUSTODY OF DEEDS—DOCUMENTS SHEWING EXISTENCE AND EXTINGUISHMENT OF EASEMENT APPURTENANT TO LAND SOLD—RETENTION BY VENDOR OF FORMER SERVIENT TENEMENT.

In *re Lehmann v. Walker* (1906) 2 Ch. 640 was an application under the Vendors and Purchasers' Act to determine the right to the custody of certain title deeds. The deeds in question shewed the existence of an easement appurtenant to the land sold, and also its extinguishment, the vendor retained the former servient tenement and claimed to be entitled to retain the deeds in question, and Eady, J., held that his claim was well founded.