

WILL—DEVISE OF MORTGAGED PROPERTY—TRUST FOR SALE SUBJECT TO RENT CHARGES TO BE CREATED FOR BENEFIT OF DAUGHTERS OF SETTLOR—MARSHALLING — LIABILITY OF RESIDUARY ESTATE—REAL ESTATE CHARGES ACT, 1854 (17-18 VICT. C. 113), s. 1 (10 EDW. VII. C. 57, SEC. 38 (ONT.)).

*In re Fry, Fry v. Fry* (1912) 1 Ch. 86. The testator whose property was in question in this case, devised real estate which was subject to mortgages at the date of his will and death, to trustees on trust to sell, but directing that rent charges of specified amounts for the benefit of his daughters should be created and reserved thereout. The property was insufficient for the creation of the rent charges and the payment of the mortgage debts. There was no "contrary or other intention" signified by the testator within the meaning of Locke King's Act (17-18 Vict. c. 113) (see 10 Edw. VII. c. 57, s. 38 (Ont.)). Joyce, J., held, notwithstanding the provisions of that Act, that, on the principle of marshalling, the rent chargees were entitled to have the property sold subject to their charges, and to have the deficiency made good for the payment of the mortgage debts out of the general personal estate, and, if that proved insufficient, then any balance would have to be raised by mortgage of the rent charges.

TAXED LAND—POWER TO LEASE LAND—UNOPENED MINES—WILL—CONSTRUCTION.

*In re Daniels, Wicks v. Daniels* (1912) 2 Ch. 90. Two or three points of interest are decided by Eady, J. First, that a power in a will given to trustees to lease land, does not authorize them to make a lease of unopened mines, and second, where under such a will the trustees and cestuis que trust have made a lease of unopened mines, which though unauthorized by the will could have been authorized under the Settled Land Acts, the lease will be treated as if made under the Act, and three-fourths of the rents and royalties must be set aside as capital, and, third, that a direction in a will to pay the rents of unopened mines to a tenant for life, is not an expression of a contrary intention within the meaning of s. 11 of the Settled Land Act of 1882, which would interfere with that mode of applying the rents and royalties.