

was whether the vendors, who were trustees, could make title without the concurrence of their cestui qui trust. The property in question had been purchased by the trustee in breach of trust and the cestui qui trust was not sui juris. Eady, J., held that as the cestui qui trust was not capable of electing to take the property in its existing state, the trustee could make a good title without the concurrence of the beneficiary.

LANDLORD AND TENANT—COVENANT—"IMPOSITION"—NOTICE BY SANITARY AUTHORITY TO RECONSTRUCT DRAINS.

In re Warriner, Brayshaw v. Ninnis (1903) 2 Ch 367. Eady, J., holds that, where under a lease for three years, the tenant covenants to pay "all rates, taxes, assessments and impositions whatsoever, whether parliamentary, parochial or otherwise," notwithstanding the shortness of the term, the tenant is liable to pay the expense of reconstructing the drains on the premises pursuant to a notice given by a sanitary authority under an Act of Parliament.

EASEMENT—WAY—PRESCRIPTION—PAYMENT OF ANNUAL SUM—INFERENCE TO BE DRAWN FROM PAYMENT—LOST GRANT—PRESCRIPTION ACT, 1832 (C. 71) s. 2—(R.S.O. C. 133, s. 34.)

In *Gardner v. Hodgson's Brewery* (1903) A.C. 229, the House of Lords (Lord Halsbury, L.C., and Lords Alverstone, Macnaghten, Davey, Robertson, and Lindley) have affirmed the judgment of the the Court of Appeal (1901) 2 Ch. 198. The action was to restrain the obstruction of a way in respect of which the plaintiff claimed an easement. The evidence shewed that the way in question had been used by the plaintiff and his predecessors in title for forty years, but also that they had paid an annual sum of 15 s. to the defendants and their predecessors in title. There was no precise evidence as to why, or for what, this payment was made. Their Lordships were of the opinion that the proper inference was that it had been paid for the right to use the way in question, and there was therefore no ground for presuming a lost grant of the way, and there was consequently no evidence of user as of right so as to confer a title under the Prescription Act, 1832, s. 2 (R.S.O. C. 133, s. 34.)