

1905 to the predecessors in title of the company the lessees covenanted that at the end or sooner determination of the term all erections, fences and fixed machinery in the demised seams or on the surface of the said premises shall be left in good repair and condition by the lessees. The company which became assignees of the lease worked the mine, but it proved unremunerative and certain debenture holders of the company brought an action to enforce their security and therein obtained the appointment of a receiver who by the order of the Court was directed, pending the term, to sell the machinery and plant upon the premises; which was accordingly done, and the proceeds were paid into Court. The lessor now claimed a declaration that certain articles sold by the receiver were fixed machinery or erections within the above-mentioned covenant and that under the covenant the proceeds were payable to the lessor. Astbury, J., who tried the action, was of the opinion that the articles in question were "fixed machinery" and formed part of the tenants' trade fixtures, and in the absence of very clear evidence to the contrary were removable by the lessees, and that the covenant did not preclude removal during the term; but only prohibited the removal of such fixed machinery as was in fact fixed and *in situ* at the end of the term. The Court of Appeal (Eady, M.R., and Scrutton, L.J., and Eve, J.) however, was unable to agree to that view and held that the covenant was sufficiently explicit to prevent any trade fixtures once affixed from being thereafter removed by the lessees at any time.

WILL—CONSTRUCTION—JOINT TENANCY OR TENANCY IN COMMON
—EXPRESS MAINTENANCE CLAUSE—INCOME ARISING FROM
"SHARE OR SHARES" OF PROPERTY.

In re Ward, Partridge v. Hoare-Ward (1920) 1 Ch. 334. In this case the point to be decided was whether certain infant beneficiaries under a will took as joint tenants, or tenants in common. The will contained a clause empowering the trustees to apply the income of the share or shares of any minor or minors in or towards the maintenance, education and support of such minor or minors; and it was held by Astbury, J., that this clause sufficiently indicated that the beneficiaries were intended to take as tenants in common. Those who supported the view that a joint estate was given contended that a gift of maintenance out of the income did not necessarily shew that the testatrix intended the children to take the capital in common, or involve any actual or notional segregation of the capital: but Astbury, J., though admitting the case was not free from doubt, thought that in order to apply the income of the share to which a minor was entitled there must be an actual or notional segregation.