

James Walmsley, Elizabeth Kirvan, Annie Loft, and Richard George Loft took benefits under Thomas Walmsley's will; they also were amongst those entitled to share in the residuary estate of John Walmsley, and thus to share in that part of "Walmsley villa" included in the entailed lands. Thomas Walmsley in his will assumed to dispose of that over which he had no power of disposition; as to their interest in that part, the four persons named were put to their election between their interests under Thomas Walmsley's will and their respective interests in that part of "Walmsley villa" over which Thomas had not a disposing power.

Reference to Theobald on Wills, 5th ed., p. 96; *ib.*, 7th ed., p. 103; Farwell on Powers, 2nd ed., p. 384; Rogers v. Jones (1876), 3 Ch.D. 688; In re Fowler's Trust (1859), 27 Beav. 362, 365; Box v. Barrett (1866), L.R. 3 Eq. 244; Halsbury's Laws of England, vol. 13, p. 116, para. 132; Cooper v. Cooper (1870-4), L.R. 6 Ch. 15, L.R. 7 H.L. 53.

The widow of Thomas Walmsley was entitled to dower in the entailed lands; for a consideration provided from the estate she had assigned to the trustees her dower interest. The residuary devisees under John Walmsley's will were entitled to the entailed lands, subject to the dower interest.

There should be a reference to the Master in Ordinary to ascertain the value of the dower interest, and also the relative values of the part of the lands in question declared to have been the property of Thomas and of the parts declared to have been held by him in fee tail, and also the relative value of that part of the entailed property included in the devise for the widow's life of "Walmsley Villa" and the remaining part of the entailed land.

By agreement of all parties, the proceeds of the sales by the trustees of the lands are to be taken and treated in lieu of the lands themselves. On ascertainment of the matters referred to the Master, distribution can be made accordingly.

For the purposes of the present proceedings, all parties interested under Thomas Walmsley's will, and not interested in contending that under John Walmsley's will Thomas acquired an estate tail, are sufficiently represented by the trustees: declaration to that effect.

Costs of all parties out of the estate—those of the trustees as between solicitor and client.