

to Smith, Elder & Co. The contention on the part of the defendants, that the personal representative of Charles Lamb was entitled to copyright in the letters was overruled.

TENANT FOR LIFE AND REMAINDERMAN—REAL ESTATE—TRUST
FOR CONVERSION—PAYMENTS IN NATURE OF ROYALTIES—CAPITAL OR INCOME.

In re Darnley, Clifton v. Darnley (1907) 1 Ch. 159. This was an administration action in which a question arose between tenant for life and remainderman as to whether certain payments received by the trustee of the estate were to be deemed income or capital. The estate was that of a testator who by his will gave his residuary real and personal estate to a trustee upon trust for conversion, and to pay the proceeds to his wife for life and after her death to his children. There was no power to postpone conversion, nor any express gift of the income before conversion. Part of the testator's real estate was under lease which empowered the lessee to dig chalk on certain portion of the demised land, and to take additional chalk land on paying therefor £900 an acre. A sale of the real estate had been directed, but had not taken place. The question was whether moneys thus received or to be received for chalk was to be deemed capital or income and Kekewich, J., decided that it must be treated as income.

LEGACY TO SCHOOL—DISCONTINUANCE OF WEEK-DAY SCHOOL—
CONTINUED USER AS SUNDAY SCHOOL—LAPSE.

In re Waring, Hayward v. Attorney-General (1907) 1 Ch. 166, a testatrix by her will bequeathed a legacy to "St. Andrew's School, Heybridge," for the benefit thereof. A school of that name had been founded by a brother of the testatrix for the education of the poorer classes. For some years previous to the testatrix's death, but after the date of her will, the use of the school as a week-day school had been discontinued, and at the time of her death it was only used as a Sunday school. The question was whether the legacy had lapsed on the ground that the purpose for which the school had been founded had to a great extent failed. Kekewich, J., held that it had not inasmuch as there had not been a total failure of the institution inasmuch as it still survived in the Sunday school and served the purpose for which it was founded one day in the week.