KEECH *v.* SANDFORD.

[S. C. 2 Wh. & T. L. C. 693.]

Oct. 31, 1726.

Lease of a market devised to a trustee for the benefit of an infant; lessor, before expiration of the lease, refuses to renew to the infant; trustee takes it himself, shall be obliged to convey to the infant, and account for the profits.

A person being possessed of a lease of the profits of a market, devised his estate to trustee in trust for the infant; before the expiration of the term the trustee applied to the lessor for a renewal, for the benefit of the infant, which he refused, in regard that it being only of the profits of a market, there could be no distress, and must rest singly in covenant, which the infant could not do; there was clear proof of the refusal to renew for the benefit of the infant, on which the trustee gets a lease made to himself. Bill is now brought to have the lease assigned to him, and to account for the profits, on this principle, that wherever a lease is renewed by a trustee or executor, it shall be for the benefit of *cestui que* use; which principle was agreed on the other side; though endeavoured to be differenced, on account of the express proof of refusal to renew to the infant.

[62] *Lord Chancellor.* I must consider this as a trust for the infant; for I very well see, if a trustee, on the refusal to renew, might have a lease to himself, few trust-estates would be renewed to *cestui que* use; though I do not say there is a fraud in this case, yet he should rather have let it run out, than to have had the lease to himself. This may seem hard, that the trustee is the only person of all mankind who might not have the lease: but it is very proper that rule should be strictly pursued, and not in the least relaxed; for it is very obvious what would be the consequence of letting trustees have the lease, on refusal to renew to *cestui que* use. So decreed, that the lease should

be assigned to the infant, and that the trustee should be indemnified from any covenants comprised in the lease, and an account of the profits made since the renewal.