on his own life. After the testator's death the mortgagees received the amount of the policy, which was more than sufficient to secure the amount secured by the mortgage on the policy, and claimed to set off against the claim of the executors to the surplus, the arrears due to them on the annuity. But North, J., held that they had no such right. He says at p. 226:

The decisions are clear that a debt due by the testator in his lifetime, and for which his executor was never personally liable, cannot be set off against a sum never payable to the testator at all, and in respect of which he never had a right of action, but which first became payable after his death, and then became payable to the use of the executor.

There had been some conflict of authority on the point, and North, J., elected to follow the decision of Jessel, M.R., in *Talbot* v. *Frere*, 9 Chy. D. 508, rather than the decision of Lord Romilly, M.R., in *Re Haselfoot*, L. R., 13 Eq. 327; *Spalding* v. *Thompson*, 26 Beav. 637, and *Ex parte National Bank*, L. R. 14 Eq. 507, 516.

APPOINTMENT OF NEW TRUSTEES—DEATH OF SOLE TRUSTEE IN TESTATOR'S LIFETIME—VESTING ORDER.

In re Williams Trusts, 36 Chy. D. 231, the sole trustee named in a will had died in the testator's lifetime. The testator's heiress-at-law had died intestate (after the Conveyancing Act, 1881, had come into operation), and there was no personal representative of her estate. North, J., on a petition for the appointment of a new trustee, which was served on the heir-at-law of the testator, made an order vesting the property in the new trustees for such estate as was vested in the heiress-at-law of the testator at the time of her death, notwithstanding that the Conveyancing Act provided that her estate as trustee should pass to her personal representative.

VENDOR AND PURCHASER—RESTRICTIVE COVENANTS—RIGHT OF PURCHASER TO ENFORCE RESTRICTIVE COVENANT—INJUNCTION.

Collins v. *Castle*, 36 Chy. D. 243, is a case in which a purchaser of part of a certain property, offered for sale subject to certain restrictive covenants as to building, was held entitled, by Kekewich, J., to enforce such covenant as against a purchaser of other parts of the same property, by restraining him from erecting buildings of less value than that stipulated for by the restrictive covenants subject to which the land had been sold. It was attempted on the part of the defendant to exclude the case from the ordinary rule, on the ground that although the property had originally been offered for sale at the same time, yet the sale to the defendant had been made subsequently to the purchase by the plaintiff. But this fact was held not to exclude the case from the law laid down by Wills, J., in *Nottingham Patent Brick and Tile Co.* v. *Butler*, 16 Q. B. D. 778, and approved by the Court of Appeal. The statement of the law by Wills, J., was as follows:

When the same vendor, selling to several persons plots of land, parts of a larger property, exacts from each of them covenants imposing restrictions on the use of the plots sold, without putting himself under any corresponding obligation, it is a question of fact whether the restrictions are merely matters of agreement between the vendor himself and his vendees imposed for his own benefit and protection, or are meant by him, and understood by the buyers to be, for the common advantage of the several purchasers. If the restrictive covenants are simply for the benefit of the vendor, purchasers of other plots of land from the vendor cannot claim to take advantage of them. If they are meant for the common advantage of a set of purchasers, such purchasers may enforce them *inter se* for their own benefit.

Applying this rule to the case before him Kekewich, J., granted the injunction as prayed.

SHARES — TRUSTEE — INDEMNITY—ACTION BEFORE CALL—DISCLAIMS OF LEGACY.

Hobbs v. *Wayet*, 36 Chy. D. 256, is a decision of Kekewich, J. Moneys belonging to A. were invested in the shares of a company in the joint names of A & B, the ultimate trust being for the estate of A. A predeceased B, and the company having gone into liquidation this action was brought by B against the representative of A's estate for indemnity against liability on the shares, before he had been placed on the list of contributors, and before any call had actually been made upon him, and he was held entitled to the relief prayed. The shares in question had been bequeathed by A to certain charitable societies, one of whom, apprehensive that the shares might be fraudulently disposed of by the personal representative, placed a *distringas* upon the shares; and another question in the case was whether the society had thereby precluded itself from disclaiming the legacy which by reason of the failure of the company had become *damnosa hereditas*, and the learned judge held that it had not.