TRUSTEE—POWER TO APPOINT NEW TRUSTEE—EXERCISE OF POWER BY HEIR OF DECEASED TRUSTEE —"BARE TRUSTEE"—LAND TRANSFER ACT, 1875 (38 & 39 VICT., C. 87), S. 48—(R.S.O., C. 110, SS. 3, 5).

In re Cunningham & Frayling (1891), 2 Ch. 567, was an application under the Vendors and Purchasers Act for the purpose of obtaining the opinion of the Court as to whether the vendors were able to make title. The land in question was vested in 1836 by deed in W.D. and T.P. upon trust that they "or their assigns, or the survivor of them, or the heirs and assigns of such survivor, or other the trustees or trustee for the time being," should sell the same. The deed provided that if any of the trustees should die, it should be lawful for "the acting trustees or trustee for the time being, or the executors or administrators of the last acting trustee," to appoint new trustees. T.P., who survived W.D., died intestate in 1855, leaving T.H.P. his heir. T.H.P. died intestate in 1857, leaving T.S.H.P. his heir. T.S.H.P. died intestate in 1876 (after the coming into operation of the Land Transfer Act, 1875), leaving three daughters, A., B., and C., his co-heiresses. A., B., and C. never received the rents, nor otherwise acted in the trusts till 1890, when they executed a deed purporting to appoint the vendors new trustees, and to vest the trust estate in them. The questions Stirling, J., had to decide were: First, whether A., B., and C. were "trustees for the time being," and as such entitled to execute the power of appointing new trustees? The learned judge, on the authority of *In re Morton & Hallett*, 15 Ch. D. 143, held that they were, and that having on request executed the power of appointment they were "acting trustees." He also held that T.S.H.P. was not a "bare trustee" within s. 48 of the Land Transfer Act, 1875 (R.S.O., c. 110, s. 5), and therefore the estate did not on his death pass to his personal representative. The term "bare trustee," it may be remembered, had been differently defined by Hall, V.C., and Jessel, M.R.; the former in *Christie* v. *Ovington*, 1 Ch.D. 279, determined that a trustee who had active duties to perform was not a "bare trustee" even though he had no beneficial interest; whereas Sir Geo. Jessel in *Morgan* v. *Swansea*, 9 Ch.D. 582, intimated that a "bare trustee" meant a trustee without any beneficial interest. It will thus be seen that Stirling, J., adopted the view of Hall, V.C., in preference to that of Jessel, M.R.

COMPANY—WINDING-UP—SHARES PAYABLE BY INSTALMENTS—RIGHT OF LIQUIDATOR TO CALL FOR IMMEDIATE PAYMENT OF UNPAID SHARES.

In re Cordova Union Gold Co. (1891), 2 Ch. 580, was an application by a liquidator of a company in course of being wound up for an order authorizing him to make a call for the immediate payment of the amount remaining unpaid on the shares. The application was resisted on the ground that the shares had been taken upon an agreement with the company that the shares were to be paid up in instalments, and it was contended that the calls could only be made as the instalments became due under this agreement. But Kekewich, J., held that the agreement for payment of the shares by instalments only endured during the active life of the company, and that it was superseded by the provisions of the Winding-up Act in favor of creditors, and he therefore granted the order.