

the event of any trustee becoming incapable, but not in the event of any trustee becoming unfit. One of the trustees became unfit, but not incapable, and the question arose whether the cestuis que trust or the continuing trustees were the parties to appoint a new trustee in place of the trustee who had become unfit. Kekewich, J., decided that the continuing trustees were the proper persons to make the appointment, and that the words "nominated for that purpose" only apply to persons nominated to appoint new trustees in the particular event which has happened, and do not enable them to appoint in an event not contemplated by the terms of their power. But it might be asked in such a case, who are "the continuing trustees?" Does that expression include the trustee who has become unfit, who certainly continues de facto and de jure trustee up to the time of his removal; but this case throws no light on that question, inasmuch as the Court itself, on the application of some of the cestuis que trust, appointed a new trustee in the place of the one who had become unfit.

COMPANY—WINDING UP—MISFEASANCE—DIRECTORS—AUDITORS—FALSE BALANCE SHEETS—PAYMENT OF DIVIDENDS WHEN NO PROFITS—DAMAGES—REMOTENESS—WINDING UP ACT, 1890 (53 & 54 VICT. C. 63) S. 10—(R.S.C. C. 129, S. 83.)

*In re Kingston Cotton Mill Co.*, (1896) 1 Ch. 331, an application was made against the auditors and directors of a company being wound up, to compel them to make good certain moneys lost by their misfeasance. The application was made under the Winding up Act, 1890, sec. 10 (R.S.C. c. 129, sec. 83) under the following circumstances. For some years before the company was ordered to be wound up, balance sheets signed by its auditors were published by the directors to the shareholders, in which (1) the value of its mill and machinery, and (2) the value of its stock in trade were greatly over-stated. The directors and two of the auditors knew that (1) was an over-value, but none of them, except one of the directors named Jackson, knew that (2) was over-valued, but the auditors and directors (other than Jackson) believed and relied on a statement as to value furnished by Jackson, who was also manager of the company. Dividends