of title had power to sell and convey the fee simple (legal and equitable) as he has purported to do.

It will be admitted that the word "trustee" is equivocal, so far, th · ' is, as indicating what powers of sale and alienation are vested in the person so defined. Until the terms of the trust are known it is impossible to say whether the trustee has or has not power to sell and convey. The mere fact that land is conveyed to A as trustee therefore means that A's position is as follows, namely, either that of (a) a trustee with power to sell, or (b) a trustee without power to sell.

Now if that is the case, and if, as in the present case all that is known is that the land is conveyed to A as trustee, surely the purchaser has the right to say "Prove to me that A occupied the former and not the latter of the above positions before asking me to accept the title."

As the matter stands there is, it seems to us, no more reason for assuming in the present case that T occupied the first mentioned position than the last mentioned.

And yet that seems to be what the Court of Appeal have done by their judgment.

They have apparently assumed in favour of the vendor that when T executed the deed in question he had the power to do so, so as to pass the fee (legal and equitable) to the purchaser, a power he could not have unless it were conferred on him by the terms of the trust. In other words the Court seems to have supplied the missing trust by assuming that it included in its terms power to the trustee to sell and convey.

One would, it seems to us, with all possible deference to the learned Judges who have spoken, have been inclined to suppose that if a proposition of that kind was to be put forward, the onus of proving it would be upon the vendor asserting it, and that in the absence of such proof he would not be entitled to compel the purchaser to accept the title.

We think Mr. Justice Magee puts the case very fairly when he says, p. 542, "The matter must, I think, be looked at just in the same light as if Turner were now alive, and