the use of such wife as the testator's son should marry, upon the nomination of four persons named, and one of these four subsequently died, it was held that the uses failed, because the power of nomination could not be executed by the survivors. Dyer and Browne, J. J., dissented, because they thought that the donees had by the grant an interest in the marriage as a feudal incident.

Where a power was not coupled with an interest, it seems, therefore, at this time merely regarded as a bare power or authority; and the only two cases in which others than the first donees of the power could exercise it were where, by the general terms in which they were described, it might be considered as not restricted to the individuals named, but to pass to two, or even a singie survivor; or secondly, where there was no one named as donee of the power, that even a single survivor might execute it.

Thus, under this latter exception, in a case in 2 Leon. 220, where a mrn devised land to his wife for her life, and directed that after her death the lands should be sold, and the proceeds paid out to his next of kin, and made two executors, who both proved the will, after which one died; it was held that no one being named to execute the power, it went to the executors *virtute officii*, and the survivor might sell; and similar decisions were made in many other cases.

Yet though this rule obtained where no one was named to take the power, it was adjudged from even an earlier period that where the testator directed his lands to be sold by his executors, if one or more resigned, the accepting or qualifying executors alone could not sell, because the executors were in the nature of grantees, and must all act notwithstanding their resignation, as "a will of lands is not a testamentary matter;" * and in like manner the power of a survivor to sell seemed to be limited to the case where the co-executor had deceased prior to the vesting of the power.† The case of *Bonifant* v. *Greenfield*,‡ cited by the court in a recent case in this State,§ to show that a power could be executed by the continuing executors, was not the case of a bare power, but was a devise to executors to sell, which, as we have before intimated, was regarded as giving a power coupled with an interest which, as a joint estate, could well survive.

To enable the continuing executors to exercise such a bare power, the statute of 21 Hen. 8, c. 4, was passed, which authorized even a single qualifying executor to sell, but made no mention of the case of survivorship upon decease. The law upon this point seems to have been at that time that where the donees of a power not coupled with an interest were mentioned *nominatim*, the power could not survive; where, on the contrary, they were referred to generally, it would, at least while a plural number continued, and in some cases even to a single survivor. Thus, in the anonymous case above referred to, reported by Dyer,* it seemed that if the donees were described as "feofees," their survivor could well sell. So in *Lee* v. *Vincent*,† on a devise that testator's "sons-in-law" should sell, a sale by the survivors after one had deceased was held good: "it was adjudged a good sale, because he named them not by their proper names." So Perkins‡ lays down the law that one executor may sell where the will is that the executors shall sell and one refuses to intermeddle; and in the later case of *Hoiell* v. *Barnes*,§ one executor, the survivor of two, was allowed to execute a power of sale. The case of *Danne* v. *Annas* || is sometimes referred to as an authority to the contrary ¶; but this is an error, and it will be found on examination to turn on quite a different ground. The case was a devise that executors, of whom there were two, should sell with the assent of A. B. A. B. and one executor died, and a sale was then made, and held not good. But no reason is given by the court; and it was the well-settled rule that such assent as was here required was a prerequisite or condition precedent to the exercise of the power, and even the decease of one of those named to give such assent would defeat the power. **

* 15 Hen. 7, 11.
† Co. Litt. 113 *a*.
‡ 4 Cro. Car. 80.
§ *Gould* v. *Mather*, 104 Mass. 283, 290.

* Dyer, 177.
† Cro. Eliz. 26.
‡ § 545.
§ Cro. Car. 382.
|| Dyer, 219 *a*.
¶ *Per Curiam*, in *Chandler* v. *Rider*, 102 Mass. 268, 270.
** *Atwaters* v. *Birt*, Cro. Eliz. 856.