

The motion was heard in the Weekly Court at Toronto.  
G. S. Kerr, K.C., for the vendors.  
J. G. Farmer, K.C., for the purchaser.

MASTEN, J., in a written judgment, said that the vendors' testator had devised the land in question in the following words: "I appoint my son Thomas John Molyneaux and my wife to be executor and executrix respectively of this my will and I give and devise all my property and estate real and personal upon trust to allow my wife to have the use and occupation thereof during her lifetime and upon her decease . . . to divide the residue of my estate unto and equally between my children," naming them.

The widow and the children except one son agreed in the proposed sale by the executors, and were ready and willing to join in a conveyance. The one son objected. The purchaser, though he was a willing purchaser, contended that, in these circumstances, the vendors could not give a good title.

In Farwell on Powers, 2nd ed., p. 147, the result of the cases is stated as follows: "A power which is not to arise until a future or contingent event happens or until a condition is fulfilled, cannot be exercised until the event happens or the condition is fulfilled; for until then it has in fact no existence."

That rule was approved and applied by the late Chancellor in the case of *Re Rathbone and White* (1892), 22 O.R. 550.

The proposed conveyance is not effective unless all parties entitled are sui juris and join in it.

*Order accordingly.*