

13th April, 1889; she had the right to convey her life estate, held as it was on such insecure tenure, and consequently the deed was not wholly ineffective. Beyond her life estate she had no power to convey; and it cannot be successfully contended that this deed was an exercise of the power of appointment given by the will of her husband. "A power to be executed by will cannot be executed by deed, and equity, will not relieve if the attempt is made:" Farwell on Powers, 2nd ed., p. 332.

Upon the death of his mother the plaintiff took some interest in the parcel "B." sufficient to entitle him to a partition or sale of this land.

I do not determine what that interest is—it may be threshed out in the Master's office on the reference I shall order.

As to parcel "B." there will be a declaration that plaintiff is a person entitled to compel partition of land "B." within the meaning of Rule 956 (1) and under the Partition Act, R. S. O. 1897 ch. 123, referring it to the Master at Ottawa for partition or sale under the usual form of judgment.

As each party has succeeded in part, there will be no costs up to judgment. The Master will report specially as to the costs in his office; and further directions and further costs will be reserved to be disposed of by me.

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JUNE 8TH, 1907.

DIVISIONAL COURT.

FOSTER v. TORONTO ELECTRIC LIGHT CO.

*Nuisance—Clanging of Heavy Gate—Jarring House Adjoining — Disturbance of Inmates—Damages—Obstruction of Highway—Erection of Fence—Disputed Boundary—Plan—Evidence—Possession—Counterclaim—House Leaning over upon Adjoining Land—Injury to Fence and Gate—Projecting Eaves—Easement—Prescription—Conflicting Evidence—Findings of Judge—Appeal.*

Appeal by defendants from judgment of MACMAHON, J., 9 O. W. R. 590.

J. S. Lundy, for defendants.

F. J. Roche, for plaintiff.