

plaintiff the right to receive the compensation money, and that as to it I. H. Y. died intestate, and it descended to her heirs-at-law, of whom the plaintiff was one, and the plaintiff was allowed to amend by adding the other heirs-at-law as parties.

J. K. Kerr, Q.C., and Wm. Macdonald, for plaintiff.

Osler, Q.C., for defendants.

STREET, J.]

[March 11.

*In re COLLARD AND DUCKWORTH.*

*Will—Devise for life—Power of appointment—Exercise of power—Covenant not to revoke will—Title to land—R.S.O., c. 100, s. 19.*

M. D. by her will devised certain land to trustees upon trust to hold one part to the use of her son, C. S. C., for his life, and after his decease to convey the same to his children, or to such of the testatrix's other three sons or their children as C. S. C. might by his last will appoint; and the other part to the use of her son, W.D., in precisely the same way.

C. S. C. and W. D. each appointed his parcel to the other by will duly executed, and each conveyed to the other his life interest, and covenanted in the conveyance not to revoke the appointment made by the will. They then contracted to sell both parcels to a purchaser.

*Held*, that C. S. C. and W. D. each took under the will a life estate with a power to appoint the inheritance in fee by will amongst the specified objects, and that such a power cannot be executed except by will, the intention being that the donee of the power shall not deprive himself until the time of his death of his right to select such of the objects of the power as he may deem proper; and notwithstanding the covenants here given not to revoke the appointments, a subsequent appointment by will to one of the other objects of the power would be a good execution of it, and the covenants would not affect the title of the subsequent appointee, for he would take the estate under the original testatrix, and not under the devisee for life.

*Held*, also, that the position of C. S. C. and

W. D. was not aided by s. 19 of R.S.O., c. 100, which gives to the donee of a power the right to release or to contract, not to exercise it; by so doing they could not confer upon themselves the right to give the purchaser a good title.

Upon a petition under the Vendor and Purchaser Act, it was therefore declared that C. S. C. and W. D. could not make a good title.

D. Urquhart and E. J. B. Duncan, for the petitioners.

McCrimmon, for the purchaser.

STREET, J.]

[March 11.

MCINTOSH v. ROGERS.

*Vendor and purchaser—Contract—Interest—Taxes.*

Motion for supplemental judgment on further directions upon questions as to interest and taxes in an action for specific performance of contract for purchase of land by defendant.

By the terms of the contract (see 14 O.R. 97) the existing mortgage was to be assumed by the purchaser, and the balance of the purchase money was payable "on completion and tendering a conveyance."

*Held*, that this meant that the purchaser should assume the mortgage from the time when the purchase money became payable. The tendering of the conveyance meant the offer to the purchaser of a properly executed conveyance at a time when the vendor deemed the purchaser bound to accept the conveyance and the title, and to pay over the purchase money; and the vendor having done this before action, and the purchaser having refused to accept the conveyance or pay his purchase money at that time, on the ground that the vendor could not then make a good title, and the purchaser's position having been sustained, and no subsequent offer of the conveyance having been made, the purchaser was not obliged to accept possession until the whole matter was closed, because he would then from the time of possession become liable to pay interest contrary to the obligations of his contract.