conferred in the case in hand; because, by the will of their testator, power was given to a majority of the executors to discharge any mortgage which they might take in the performance of the trusts of the will.

The case it must be borne in mind, therefore, was not the case of a mortgage made to the testator and devolving on the executors as part of his estate; but it was the case of a mortgage made to the executors themselves in the execution of their duties. The mortgaged property had, therefore, never been in the dominion of the testator, and he had never at any time any right of conveyance in respect of it. In these circumstances, therefore, the case would have been more informing if the learned Chief Justice had specially dealt with that aspect of the case. He refers to some observations of Mowat, V.-C., in *Ewart* v. *Gordon*, 13 Gr., at p. 57, where it is said: "If it is the will of a testator that any one or more of those he names should have authority, without the concurrence of the others, to sell his real estate, or receive the purchase money, it is within his power to say so," and the learned Chief Justice seems to rest his judgment on that dictum. This, however, it may be remarked, was the case of a power in reference to the testator's own property over which he had a dominion, and not in regard to property which becomes vested in his executors after his death, and over which the deceased never had dominion. Moreover, such a power as that in question in *Re Spellman and Litovitz* appears to "transgress the rules of law." By the taking of the mortgage there in question a joint estate became vested in the mortgagees at common law; that estate could only be effectually reconveyed according to the rules of law by all the mortgagees or the survivor or survivors of them, in case of the death of any, joining in the reconveyance or discharge.

The testator virtually sought to abrogate this rule of law, and to empower some to do, what the law requires all to join in doing: see *Matson* v. *Denis*, 10 Jur. N.S. 461.

The power, therefore, under which the executors assumed to discharge the mortgage in question appears to have been legally ineffectual for two reasons: (1) because it related to property over which the donor himself never had any dominion, and (2) because