

POWERS.

In Farwell on Powers, 3rd ed., p. 56, the learned author writes in reference to the creation of powers: "It is submitted that the true principle is that a man may by any disposition, by which he himself is able to assure an estate or interest, legal or equitable, in property, confer upon another power to assure a like estate or interest to third persons." We are inclined to think that the proposition would be better stated in this way: "A man may confer upon another power to assure to himself, or some other person, any estate or interest in property which the donor of the power is himself entitled to convey."

But there is this limitation on the rights of the donor of a power, viz.:—"The author of a power may surround its execution with as many solemnities, and direct it to be carried out by such instruments, at such times, with the consent of or by such persons as he pleases, *provided that he does not transgress the rules of law or equity.*" Farwell on Powers, 3rd ed., p. 147. In other words, the donor of a power cannot alter the rules of law or equity which regulate the transmission of property. We may further observe that powers under wills and deeds are both distinguishable from a power to convey an estate under a letter of attorney. The estate raised by the execution of a power (whether it be created by deed or will) *takes effect as if limited* in the instrument creating the power. Sugden, p. 199.

We have been led to make these observations after perusing the recent case of *Re Spellman and Litovitz*, 44 O.L.R. 30.

In that case, which was an application to the Court under the Vendors and Purchasers Act, an objection was made by the purchaser, that a certain mortgage incumbrance had not been properly discharged. The facts connected with it, were that it had been made in favour of several executors and that the certificate of discharge had been executed only by a majority of them. The learned Chief Justice who heard the application expressed himself as strongly of the opinion that a mortgage made to several executors or trustees of a will could not be validly discharged by some of them, unless some special power has been conferred upon some of them so to do; but he held that this special power had been