The older books are full of cases on the subject, which have been collected and commented on by Lord St. Leonards in his work on Powers, 7th ed., 143 *et seq.* He says that at common law a naked authority given to several cannot survive. Therefore, if a man devise his lands to A for life, and that, after his decease, the estate shall be sold by the executors, naming them, as by B and C, his executors, or by B and C, who are not named executors—in that case, if one of them die during the life of A, the other cannot sell, because the words of the testator would not be satisfied. But where the words of the testator can be satisfied, a court of law will relax the rule. Therefore if three or more are appointed executors, and the devise is that the estate shall be sold by the executors generally, the survivors may sell, because the plural number of executors remains. In *Howell* v. *Barnes*, Cro. Car. 382, 1 Jones, 352, pl. 3, although it was holden that the executors took an authority only, yet it was determined that the survivor could sell,—it was not deemed necessary that the plural number should remain. Lord St. Leonards then states that Mr. Hargrave has endeavoured to establish that where the power is given to executors, or to persons *nominatim* in *that character*, the survivor may sell, as the power is given to them *ratione officii*; and as the office survives, by parity of reason the authority shall also survive, N. (2), Co. Litt. 113a, and adds, that the liberality of modern times will probably induce the courts to hold that in every case where the power is given to executors, as the office survives so may the power.

The conclusion he draws from the cases (p. 146) is—(3.) That where the authority is given to "executors," and the will does not expressly point to a joint exercise of it, even a single surviving executor may execute it; but

(4.) That where the authority is given to them *nominatim*, although in the character of executors, yet it is at least doubtful whether it will survive.

Mr. Williams, in his work on Executors (6th ed., 892 *et seq.*) quotes this as being the state of the law on the subject. Mr. Chance, Powers (s. 651 *et seq.*), criticises the cases cited by Lord St. Leonards and the conclusions deduced from them, and (sec. 669) seems to leave the question just as it had been left by him. Mr. Farwell, Powers (p. 372), states Lord St. Leonards' third conclusion, though not in the same words, practically to the same effect, adding *sed qu.*

Many other books might be referred to for a more or less extended mention of the subject, but adding nothing to the clearing up of the uncertainty.

In the American Courts, numerous cases have arisen involving this question. In *Putnam Free School* v. *Fisher*, 30 Maine, 526, 527, Shipley, C. J., said: "Where an estate is devised to executors *co nomine* in trust, the devise is made to the official not to the individual persons, and the whole trust vests in those who accept it and become executors of the will; and when an estate is so devised, or when the executors have by the will a power to sell, coupled with an interest in trust, a conveyance by survivors, or by those alone who accept the trust, will be good."

In this view of the law I concur; it appears to me to be consonant to reason, is supported by authority, by the opinions of some of our ablest writers, and is in accordance with the latest English decisions, *Brassey* v. *Chambers*, to which I have been referred.

I therefore hold that the surviving executor can make a good title in the first parcel of land to the purchaser.

As to the second parcel, it is very difficult to ascertain what the testator's real meaning was. He appears to devise the land and personal property to Thomas S. Ford, as a payment for money advanced by him, and in consideration of his supporting his mother during his life,—and, then, he gives his executors a power to sell the realty and personalty with consent of the wife, and if the proceeds are more than satisfy just claims, the balance to be equally divided among his family, and in that case Thomas was to have a double share. There was no previous devise of personalty, and no mention made of debts—probably he intended