

MEREDITH, C.J.C.P.

NOVEMBER 1ST, 1918.

*RE SPELLMAN AND LITOVITZ.

Vendor and Purchaser—Agreement for Sale of Land—Objections to Title—Power of Appointment—Validity of Execution—Conveyancing and Law of Property Act, sec. 24—Discharge of Mortgage Made to Executors—Necessity for Execution by All—Provisions of Will.

Motion by the vendor for an order, under the Vendors and Purchasers Act, declaring the objections made by the purchaser to the title to land forming the subject of an agreement of sale and purchase, to be invalid.

The motion was heard in the Weekly Court, Toronto.
G. R. Forneret, for the vendor.
E. F. Singer, for the purchaser.

MEREDITH, C.J.C.P., in a written judgment, said that the first question was, whether the exercise of a power of appointment in respect of land was invalid if not made in the manner provided for in sec. 24 of the Conveyancing and Law of Property Act, R.S.O. 1914 ch. 109, in a case in which the instrument creating the power does not provide for the manner in which it is to be executed.

This question must be answered in favour of the vendor. Upon the case as stated by counsel, the vendee's objection to the validity of the execution of the power of appointment failed. It would not have been necessary to take time for consideration of the point but for a paragraph in the last edition of Farwell on Powers which seemed to convey an opinion that such a power as that in question, if not exercised by will, must be executed in conformity with the writing creating the power or else in the manner set out in the statute. Whether the execution, if defective, would have been aided in a Court of Equity, cannot be considered in this matter, there being no information as to the facts before the Court.

The next question was, whether less than all of the living executors of a will could give a valid discharge of a mortgage of land so as to revest the land in the mortgagor. See *Ex p. Johnson* (1875), 6 P.R. 225.

The trend of legislation seems to have been toward empowering any hand entitled by law to receive the debt, and to give a valid discharge of it, also to reconvey, by way of a statutory discharge of mortgage registered, the land pledged for its payment; but whether that trend had reached the case of one of several ex-