

The land was at one time let by Alexander Morrison to the appellant; but the appellant now asserted that he had had such possession of it, since that time, as to give him title to it.

In the issue directed the widow was made plaintiff and the heirs at law and next of kin defendants.

No one disputed the widow's right to dower—nor could under the Statute of Limitations—so that, as directed, the issue could be only a useless proceeding. The indirect purpose, however, was to determine, if possible, whether the appellant had acquired title to the land, not against the widow but against the appellant's co-heirs, so that she might be in a better position to make an election, under sec. 9 of the Devolution of Estates Act, whether to take under or against the provisions of that enactment.

There was no power to make use of Rule 615 for that purpose: it is applicable only to one entitled to compel partition, and is to be used only for the purpose of making partition. If she could compel partition at all, it could only be if she were not taking under the Devolution of Estates Act. And the issue directed could not aid such a purpose. The only question that could be tried was, whether the appellant had acquired a title against the respondent, and it was admitted and was obvious that he had not. No issue was directed between the appellant and the other heirs at law—none could be directed against their will; such an issue would be improper and might be useless.

The land, if it were the intestate's at the time of his death, had not yet devolved upon the heirs at law, but had devolved upon his personal representative. The respondent should become such personal representative, and then bring an action to recover possession of the land from the appellant.

All the heirs at law mentioned had been made parties to these proceedings, and the order for the issue had been made against them, although the appellant only had had notice of these proceedings. The names of all who had not had notice should have been struck out.

The issue ought not to have been directed, and must be set aside with the order directing it.

Again, a widow entitled to dower out of the whole of the land, which dower has not been assigned, is not a person who can "compel partition." A right to possession must exist to entitle any one to compel partition.

Review of the law and authorities upon this point.

Again, an application such as this, not only made within the three years (sec. 13 of the Devolution of Estates Act), but before