

and reserved at the trial, on the ground that the road work in course of which the excavation took place was conducted under contract which limited the contractor in taking gravel to a point some fifteen feet away from the tree, and that the corporation was not liable for the way in which the contractor carried out his contract.

Held, that even if the finding of responsibility for excavating around the tree and precipitating its fall were insufficient to support the verdict, the additional finding that the tree was a dangerous nuisance and that the corporation had notice of its dangerous condition sufficiently long to have removed the nuisance, was sufficient.

Hunter and Shaw, for plaintiff.

Davis, Q.C., and MacNeill, for defendants.

North-West Territories.

SCOTT, J.]

[Feb. 26.

RE MEWBURN AND MEWBURN.

Land Titles Act, 1894—Power of attorney.

This is a reference by the Registrar of the South Alberta Land Registration District under s. 111 of The Land Titles Act, 1894 on an application to register a power of attorney.

SCOTT, J.: The power in question is a general one and it is not in the form S in the schedule to the Act. It authorizes the attorney among other things to sell and absolutely dispose of the principal's real estate, lands and hereditaments, and to execute and do all such assurances, deeds, covenants and things as shall be required for that purpose, but it does not contain a description of any lands in respect of which it may be exercised. The question submitted is whether the power substantially complies with the provisions of s. 87 of the Act so as to entitle it to be registered. In my opinion it does not comply with the provisions of that section and it cannot be registered under the Act.

The form S of power of attorney prescribed by s. 87 shows that it is intended to contain a description of the lands to which it is applicable, and s. 87 itself provides that the power shall be registered and that the registrar shall make a memorandum on the certificate of title and the duplicate thereof of the particulars therein contained and of the time of its registration. These provisions appear to me to render it necessary that the power should contain a description of the lands, because it would otherwise be impossible for the registrar to comply with them. There is the further fact that s. 87 provides that until the power is revoked the right of the owner to transfer or otherwise deal with the land shall be suspended. If a description in the power of the lands to which it is applicable is unnecessary, how is the registrar to ascertain whether or not the owner of any lands has by giving such a power debarred himself from dealing with them? He cannot ascertain this by reference to the certificate of title nor by reference to any book or record which he is directed by the Act to keep, except (perhaps) the day book, and yet it would be his duty to ascertain that fact before registering any transfer executed by the owner.

J. P. J. Jephson, for the applicant.

The Registrar in person.