

SUTHERLAND, J., read a judgment in which (after setting out the facts) he said that sec. 3 of the Powers of Attorney Act provides that, although the donor of the power has died, certain acts thereafter done pursuant to the power were valid. It was stated on the argument that the adult heirs had approved of the sale and that the Official Guardian would probably approve if necessary.

If the power of attorney had expressly provided, as indicated in the first part of sec. 2, that it might be exercised in the name of and on behalf of the heirs, etc., it also providing (as it does) "that these presents shall not be revoked by my death," it would be clear that it could be validly exercised after the death of the donor. In that case it would also be open to the criticism that it was testamentary in its character, even though not executed with the "formalities attending a last will." Section 2 deals with two distinct cases: (1) the case of the power providing that it may be exercised in the name of and on behalf of the heirs, etc.; (2) the case of the power providing by any form of words that the same shall not be revoked by death; while the clause following applies to each and enacts that each provision shall be valid and effectual.

As the power of attorney contains plain words "providing that it shall not be revoked by the death of the person executing it," these words must be given effect and held to be valid and effectual.

Therefore, under the power of attorney, the attorney was enabled to execute a valid transfer, after the death of the donor.

The transfer, however, should be executed by the attorney for and in the name of the donor—"Mary McCarty by her attorney Thomas McCarty." He did not so execute it, but in his own name; and in his affidavit he described himself as the transferor and spoke of the power under which he conveyed.

For that reason the Master could not properly receive and register the transfer in its present form. If amended and re-executed it should be received and executed. If and when the amended or new transfer is executed by Thomas McCarty and the money is paid to him, he will receive it for the estate of the donor and be responsible to the estate therefor.

It was suggested by the Court upon the argument that the purchase-money might be paid into Court. Counsel for the appellant, although contending that this was not necessary, agreed that it should be done, and the order made on this appeal should contain a provision therefor.

The costs of all parties should, in the circumstances, be paid out of the purchase-money or estate.

MULOCK, C.J. Ex., agreed with SUTHERLAND, J.

CLUTE, J., also agreed with SUTHERLAND, J., reading a judgment to the same effect.