

action she had made her election.
Rudd v. Harper, 422.

6. *Devise for life—Power of appointment by will—Exercise of power—Covenant not to revoke will—Title to land—R. S. O. ch. 100, sec. 19.*]

—M. D. by her will devised certain land to trustees upon trust to hold one part to the use of her son C. S. C. for his life, and after his decease to convey the same to his children or to such of the testatrix's other three sons or their children as C. S. C. might by his last will appoint; and the other part to the use of her son W. D. in precisely the same way.

C. S. C. and W. D. each appointed his parcel to the other by will duly executed, and each conveyed to the other his life interest, and covenanted in the conveyance not to revoke the appointment made by the will. They then contracted to sell both parcels to a purchaser.

Held, that C. S. C. and W. D. each took under the will a life estate with a power to appoint the inheritance in fee by will amongst the specified objects, and that such a power could not be executed except by will, the intention being that the donee of the power should not deprive himself until the time of his death of his right to select such of the objects of the power as he might deem proper; and notwithstanding the covenants here given not to revoke the appointments, a subsequent appointment by will to one of the other objects of the power would be a good execution of it, and the covenants would not affect the title of the subsequent appointee, for he

would take the estate under the original testatrix and not under the devisee for life.

Held, also, that the position of C. S. C. and W. D. was not aided by sec. 19 of R. S. O. ch. 100, which gives to the donee of a power the right to release or to contract not to exercise it; by so doing they could not confer upon themselves the right to give the purchaser a good title.

Upon a petition under the Vendor and Purchaser Act it was, therefore, declared that C. S. C. and W. D. could not make a good title. *Re Collard and Duckworth*, 735.

Charity—Mortmain—Methodist Church—Charitable uses.]—See MORTMAIN, 1.

Restraint on alienation—Validity.]—See HUSBAND AND WIFE, 2.

Evidence of devise—Registered memorial of will.]—See EVIDENCE, 2.

WORDS.

"Colour of right"—*Overholding Tenants' Act.*]—See LANDLORD AND TENANT, 1.

"More or less."—See CROWN PATENT, 1.

"Not less than \$50."—See CANADA TEMPERANCE ACT, 4.

"Solid brick."—See SALE OF LAND, 1.

"Weekly paper."—See CHURCH, 1.