

H. S. White, for the plaintiff.
I. Hilliard, K.C., for the defendants.

CLUTE, J., in a written judgment, said that the plaintiff was the widow of Alexander Morrison, deceased, who died intestate on the 9th January, 1915. Letters of administration of his estate had not been granted.

The defendants were the brothers and sisters of the deceased; the defendant Philip Morrison was in possession of the land, asserted that he was the absolute owner, and opposed the motion.

By Rule 615, a person entitled to compel partition may, by originating notice, apply for partition or sale; but it was conceded that no order for partition or sale could be made until the question of title had been determined; and the learned Judge was asked, under Rule 233, to direct an issue to be tried to determine the claim of title made by the defendant Philip Morrison: *Smith v. Smith* (1901), 1 O.L.R. 404.

The plaintiff's right to dower was not disputed; but, before making her election, she claimed the right to know of what the estate of her husband consisted, as, if she elected to take under the Devolution of Estates Act, and the defendant's title prevailed, she would get nothing.

The plaintiff came within the class entitled to compel partition under secs. 4 and 5 of the Partition Act, R.S.O. 1914 ch. 114.

Effect could not be given to the argument that the application for partition was premature: it was urged that under sec. 13 of the Devolution of Estates Act, R.S.O. 1914 ch. 119, no partition could be had until after three years from the death. If that applied to dower, it must equally apply to other interests, which would be unreasonable.

The Devolution of Estates Act has reference to the administration of estates, and not to partition, and the three years' limit has no application.

The plaintiff was entitled to apply for partition; but, the title being disputed, no order could be made at present.

Order to go adjourning the further hearing of the motion, and directing the trial of an issue as to whether or not the defendant Philip Morrison has acquired title to the land by virtue of the Limitations Act; the present plaintiff to be plaintiff in the issue; and the motion to be disposed of by the Judge after the trial of the issue.

Reference to *Fry and Moore v. Speare* (1915-6), 34 O.L.R. 632, 36 O.L.R. 301.