

HON. R. M. MEREDITH, C.J.C.P.:—If the purchaser's fears of the title have reasonable foundation in fact or law it ought not to be forced upon him.

The rule is, and always has been, that a doubtful title will not be forced upon an unwilling purchaser.

The saying that a title is either good or bad, and that the Court should determine which it is, leaving no room for a doubtful title, is blind to the facts: (1) that the Courts are fallible, and (2) that in such cases as this their judgments are not binding upon any but those who are parties to the application.

Then are the purchaser's fears well grounded; is the title in question a doubtful one?

But one point is made in the purchaser's behalf: it is said, for him, that, under the will in question, there is a possibility of issue of the devisees, yet unborn, at some time taking an interest in the land in question, which interest the parent cannot convey or bar. Is that the fact?

If the first clause of the will stood alone, each of the two devisees would take, absolutely, an undivided moiety; and so, obviously and admittedly, any fear such as the purchaser has would be quite unfounded.

But the second clause of the will unquestionably modified the effect of the first. Under it in the case of the death of either of the devisees without leaving issue, her share is to go to her survivor, or her heirs; putting it in the exact words of the will;—"I direct and it is my will that in case any of my said daughters should die without leaving lawful issue, the share of the person so dying shall go to the surviving daughter or her heirs."

The word "or" alone, of course, creates the difficulty, such as it is. If the testator meant that which she said, "surviving" daughter, then the word "and" must be substituted for the word "or." A devisee surviving must take; her issue could take only through her. If the testator did not mean "surviving" but really means "other," and had said so, a very different question would have arisen, and there might be no doubt that effect should be given to the purchaser's contention that he ought not to have the title forced upon him before it was quited, or the possible interests of unborn issue in some way bound by an adjudication in favour of the title.