MEREDITH, C.J.C.P. JUNE 12TH, 1913.

RE EDGERLEY AND HOTRUM.

Will—Construction—Devise to two Daughters—Provision in Event of one Dying without Issue—"Surviving Daughter or her Heirs"—"Or" Read as "and"—Vendor and Purchaser—Title to Land—Forcing Doubtful Title on Unwilling Purchaser.

Motion by a vendor of land, under the Vendors and Purchasers Act, for an order declaring that the purchaser's objection to the title was not a valid one, and that the vendor had shewn a good title.

Shirley Denison, K.C., for the vendor.
D. L. McCarthy, K.C., for the purchaser.

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 founded; 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