

Sutherland, J., doubted as to power to bring in the representatives of the mother, and as to the will, though he thought the mother took no more than a life estate, still a different opinion might be held by another. He made no further order, though he may have thought that, as between the parties, the title was too doubtful to be forced on an unwilling purchaser.

The title was not found to be bad, and I think after the length of time possession was held under the brother, it could fairly be said to be a good holding title, even if the frame of the will was doubtful.

Speaking for myself, I would say that the Judge might well have held that the title was good without any release from the representatives, and I can clearly and unquestionably so declare in the present action, to which the representatives are properly parties.

It was with a view of some such proceeding as this that the leave was given by Mr. Justice Sutherland, as I have ascertained from him. Even without that leave, there was no *res judicata* on the question of title. The summary proceedings under the Act afford a convenient and inexpensive way of getting the opinion of the Court on isolated points arising out of or connected with the contract. The real question here was whether a release from the heirs of the mother was needful in a proper conveyance of the farm. Sutherland, J., abstained from declaring that the title could not be forced on the purchaser, and rightly so, because, as pointed out by Kekewich, J., in *Re Walsh*, [1899] 1 Ch. 521, the whole case is not exhaustively treated on a vendor and purchasers summons, and to reach such a conclusion is really a matter for decision in an action for specific performance.

Any point expressly decided by a Judge summarily cannot be reviewed in an action for specific performance, and this is all that is meant or decided in the case relied on by Mr. Meredith of *Thompson v. Roper* (1881), 44 L. T. 507.

Apart from the question on the will, raised before my brother Sutherland, the purchaser started a claim that the vendor had released him from the contract and had sold to another. This contention is also set up in the pleadings before me (par. 8 of defence), but no evidence was offered to substantiate it. But for this contention the proper practice in cases of doubtful title arising out of testamentary language is for the matter of construction to be brought up on originating summons with all parties before the Court, and this