

way satisfactory." Mr. Barry says that he drew up a description of the property and made searches at the Record office. He was asked on cross-examination: "Q. Did you form an opinion that the conveyance by the trustees without the heirs joining would be an inadequate or invalid deed? A. I formed the opinion it would be very doubtful. There is a very grave doubt in my mind as yet. I think I would not take a title to-day without it." It will be seen that these instructions given by the defendant to Mr. Barry were nothing more than any one purchasing property usually gives to his solicitor. There is nothing in the conversation to suggest that by his decision the plaintiff was to be bound. I find as a fact that there never was any such agreement at all.

In *Hussey v. Horne Payne*, 4 A. C. 311, an action similar to this, it appeared that this provision, "subject to the title being approved by our solicitor," was sought to be introduced into a contract entered into by correspondence. In reference to it Lord Cairns says: "I feel great difficulty in thinking that any person could have intended a term of this kind to have that operation, because, as was pointed out in the course of the argument, it virtually would reduce the agreement to that which is illusory. It would make the vendor bound by the agreement but it would leave the purchaser perfectly free. He might appoint any solicitor he pleased, he might change his solicitor from time to time. There is no *directio personarum*, there is no appointment of an arbitrator in whom both sides might be supposed to have confidence. It would be simply leaving the purchaser, through the medium of his solicitors, at liberty to say from caprice at any moment: We do not like the title, we do not approve of the title, and therefore the agreement goes for nothing. My Lords, I have great difficulty in thinking that any person would agree to a term which would have that operation. But it appears to me very doubtful whether the words have that meaning. I am disposed to look upon them—and the case cited from Ireland would be authority, if authority were needed for that view—I am disposed to look upon the words as meaning nothing more than a guard against its being supposed that the title was to be accepted without investigation, as meaning in fact the title must be investigated and approved of in the usual way, which would be by the solicitor of the purchaser." See *Andrews v. Calori*, 38 S. C. R. 588.