

the appellant is concerned. Those resisting the appeal will have their costs out of the estate; the executors as between solicitor and client.

BRITTON, J.:—I agree that the appeal of William George Corkett should be dismissed. In my opinion he accepted such sums as were paid on account of maintenance, so that at the time of his application to the Chief Justice of the King's Bench Division—he intended—or must be considered as having intended—to accept the sum allowed for maintenance from 1st July, 1910, until he arrived at the age of 25 years—as in full for all maintenance.

The appeal should be dismissed without costs as to the appellant. The respondents should get their costs out of the estate.

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HON. SIR JOHN BOYD, C.

JANUARY 10TH, 1913.

CAMERON v. HULL.

4 O. W. N. 581.

*Vendor and Purchaser—Specific Performance—Objection to Title—Prior Application under Vendor and Purchaser Act—Res Judicata—Will—Parties—Practice—Originating Notice.*

Action by vendor for specific performance. On a Vendor and Purchaser application, Sutherland, J. (21 O. W. R. 655; 3 O. W. N. 807), had refused to decide that an objection by the purchaser to the title involving the construction of a will was groundless, and dismissed the application, leaving the vendor to "seek such other remedy as he may be advised." Vendor thereupon brought this action.

BOYD, C., *held*, that while any point expressly decided by a Judge upon a summary application cannot be reviewed in an action for specific performance, in this instance the point in question had expressly been left open for decision.

*Thompson v. Roper*, 44 L. T. 507, distinguished.

*Re Walsh*, [1899], 1 Ch. 521, referred to.

The proper practice in cases of doubtful title arising out of testamentary language is for the matter of construction to be brought up on an originating summons with all parties before the Court, and this might have been done pending the application under the Vendor and Purchaser Act.

*Re Nichols*, [1910] 1 Ch. 45, followed.

Action for specific performance of a contract to purchase land. See 21 O. W. R. 655; 3 O. W. N. 807.

R. G. N. Weekes, for the plaintiff.

T. G. Meredith, K.C., for the defendant.