

[1803-13] All ER Rep 178; Also reported 14 Ves 341; 33 ER 552

Simpson v Vickers

ROLLS COURT

[1803-13] All ER Rep 178; Also reported 14 Ves 341; 33 ER 552

**HEARING-DATES:** 16 MARCH 1807

11 AUGUST 1807

**CATCHWORDS:**

Will - Condition - Condition precedent - Devise subject to release to be executed within six months - Release not executed in time owing to devisee contesting validity of will - Probate will granted - Effect of condition.

A devise of real estate was made subject to the condition that within six months of the testatrix' death the devisee would execute a valid release for her estate in respect of a leg say given to him by a previous will of her brother of which the testatrix had been sole executrix In default of the devisee complying with the condition the estate was given over to the executrix of the present will The devisee was unable to comply with condition within the period owing to his contesting the validity of the testatrix's will of which probate was subsequently given.

Held: the estate should go as if it had actually been settled according to the condition; it was immaterial that the executrix and the devisee over was the same person; and, the devisee not having complied with the condition, the devise to him did not take effect.

John Simpson by his will, dated 8 March 1792, bequeathed to his brother Michael Simpson the sum of 1,000 pounds, to be paid by him within six calendar months after the testator's decease upon his then executing to the testator's executrix a release of all claims and demands: provided, that in case of his said brother's refusing or declining to execute such release, then and in such case the testator revoked the said bequest of 1,000 pounds. The testator appointed his sister, Elizabeth Simpson, sole executrix.

The testator died on 10 March 1792. Elizabeth Simpson by her will, dated 31 October 1793, devised all her freehold and copyhold estates at Hemingborough to her brother and heir-at-law, Michael Simpson, his heirs and assigns for ever, upon express condition nevertheless that her said brother did within six calendar months next after her decease at his own expense make, execute, deliverer or tender to her executor a good and valid release, receipt, or discharge for the legacy of 1,000 pounds bequeathed to him by the will

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