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NORTHCOTE v. VIGEON.

*Nov. 3, 4, 6. *Specific performance—Agreement to convey land—Defect of title—Will—Devise of fee with restriction against selling—Special legislation—Compliance with provisions of.*

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*Feb. 20.

APPEAL from a decision of the Court of Appeal for Ontario, affirming the judgment of the Queen's Bench Division in favour of the plaintiff.

Land was devised to Northcote with a provision in the will that he should not sell or mortgage it during his life but might devise it to his children. Northcote agreed in writing to sell the land to Vigeon, who was not satisfied as to Northcote's power to give a good title, and the latter petitioned under the Vendors and Purchasers Act for a declaration of the court thereon. The court held that the will gave Northcote the land in fee with a valid restriction against selling or mortgaging. (1) Northcote then asked Vigeon to wait until he could apply for special legislation to enable him to sell, to which Vigeon agreed and thenceforth paid interest on the proposed purchase money. Northcote applied for a special act which was passed giving him power, notwithstanding the restriction in the will, to sell the

*PRESENT :—Fournier, Taschereau, Gwynne, Sedgewick and King JJ.

(1) *In re Northcote*, 18 O. R. 107.

land and directing that the purchase money should be paid to a trust company. Prior to the passing of this act Northcote, in order to obtain a loan on the land, had leased it to a third party and the lease was mortgaged, and Northcote afterwards assigned his reversion of the land.

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In an action by Vigeon for specific performance of the contract with her defendant claimed that the contract was at an end when the judgment on the petition was given and that if performance were decreed the amount due on the mortgage should be paid to him and only the balance to the trust company.

The Supreme Court held, affirming the decision of the Court of Appeal, that it was not open to Northcote to attack the decision of the Chancellor on the petition under the Vendors and Purchasers Act; that if it were, and that decision should be overruled, Vigeon would be all the more entitled to specific performance; that the evidence showed the lease granted by Northcote to have been merely colorable and an attempt to raise money on the land by indirect means; and that the decree should go for specific performance the whole purchase money to be paid into a trust company.

Appeal dismissed with costs.

Marsh Q. C. & Roaf for the appellant.

McPherson & Clarke for the respondent.