

Ont.] ONTARIO ASPHALT BLOCK CO. v. MONTREUIL. [Feb. 21.

Specific performance—Agreement for sale of land—Inability to perform—Liability to damages—Diminution in price.

A lease of land for ten years provided that on its termination the lessee could, by giving notice, purchase the fee for \$22,000. In a suit for specific performance of this agreement:—

Held, applying the rule in *Bain v. Fothergill* (L.R. 7 H.L. 158), Fitzpatrick, C.J., and Davies, J., dissenting, that if the lessor, without fault, was unable to give title in fee to the land, the lessee was not entitled to damages for loss of his bargain.

Per Fitzpatrick, C.J., and Davies, J.:—The above rule should not be applied when the lease contained onerous conditions binding the lessee to expend large sums in improving the property whereby he would suffer special damages if the contract was not carried out.

Judgment appealed from (32 Ont. L.R. 243) affirmed.

D. L. McCarthy, K.C., and *Roddl*, for appellants.

Cowan, K.C., for respondent.

EXCHEQUER COURT.

Cassels, J.]

[Jan. 26.

THE KING, ON INFORMATION OF ATTORNEY-GENERAL OF CANADA,
v. TRUSTS AND GUARANTEE COMPANY.

*Provincial rights—Title to land—Dominion lands—Intestacy—
Failure of heirs and next-of-kin—Escheat—Bona vacantia.*

R., a resident of and domiciled in the province of Alberta, was at the time of his death the registered owner of a certain parcel of land in said province under a patent issued to him by the Department of the Interior of Canada on the 25th July, 1911. He died on November 18, 1912, leaving no heirs or next-of-kin. Letters of administration to his property, both real and personal, were granted to the defendant, as public administrator under the law of the province, and a certificate of title to the land in question was granted to defendant under the Land Titles Act of Alberta. The land was thereafter sold by the defendant, and the provincial government claimed the proceeds of the sale, except in so far as they were amenable to debts and administration expenses as belonging to it under the provisions of the Alberta statute, 5 Geo. V. ch. 5, sec. 1. Upon an information being exhibited by the Attorney-General of Canada to have it determined that such proceeds belonged to the Crown in right of Canada,