

*Held*, reversing the decision of the Court of Appeal (20 Ont. App. R. 476) which affirmed the judgment of the Divisional Court (22 O.R. 667), that the contract between the purchaser of a railway ticket and the company implies that the ticket will be delivered up when demanded by the conductor, and that B. could not maintain an action for being ejected on refusal to so deliver.

Appeal allowed with costs.

*McCarthy, Q.C. & Nesbitt* for the appellants.

*Du Vernet* for the respondent.

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February 20, 1894.

NORTHCOTE v. VIGEON.

Ontario.]

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

Land was devised to N., with a provision in the will that he should not sell or mortgage it during his life, but might devise it to his children. N. agreed, in writing, to sell the land to V., who, not being satisfied of N's power to give a good title, petitioned, under the Vendors and Purchasers Act, for a declaration of the Court thereon. The Court held that the will gave N. the land in fee with a valid restriction against selling. N. then asked V. to wait until he could apply for special legislation to enable him to sell, to which V. agreed and thenceforth paid to N. interest on the proposed purchase money. N. applied for a special act which was passed giving him power notwithstanding the restriction in the will to sell the land, and directing that the purchase money should be paid to a trust company. Prior to the passing of this act, N., in order to obtain a loan on the land, had leased it to a third party and the lease was mortgaged, and N. afterwards assigned his reversion in the land.

In an action by V. for specific performance of the contract to sell the land defendant claimed that the contract was at an end when the judgment on the petition was given; that he could give no title under the will; and that if performance were decreed the amount received on the sale of the land should be paid to him, and only the balance to the trust company.

*Held*, affirming the decision of the Court of Appeal, that the contract was kept alive by N., after the judgment as to title; that V. was entitled to her decree for performance; and that