and theirs alone. The case In re Williams, [1907] 1 Ch. 180, was quite different, as the legacy was vested in the one seeking maintenance.

No order as to costs save that the trustees might have theirs from the fund, and might also pay the costs of the Official Guardian and adult respondents from the same source.

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MIDDLETON, J. DECEMBER 26TH, 1918.

## MOORE v. IMESON.

*Vendor and Purchaser—Agreement for Exchange of Lands—Refusal of Defendant to Carry out—Action for Specific Performance—Unfounded Defence of Fraud—Defence that Bargain not Final—Failure on Facts—Sale of Plaintiff's Land by Mortgagee—No Surplus Existing after Satisfaction of Mortgage-claim—Award of Specific Performance Inequitable—Damages—Nominal Damages—Commission Payable by Plaintiff—Costs.*

Action for specific performance of an agreement for an exchange of lands.

The action was tried without a jury at Sandwich.

F. D. Davis, for the plaintiff.

F. C. Kerby, for the defendant.

MIDDLETON, J., in a written judgment, said that Moore owned a farm, subject to mortgages; and Imeson owned a house, also subject to mortgages. An agreement in writing was made for an exchange. The plaintiff had the better of the bargain, but the charges of fraud made by the defendant were unfounded. The defendant inspected the farm and purchased on his own opinion, formed after the inspection.

After the making of the contract, the defendant changed his mind and declined to carry out his bargain, and now set up, in addition to the charges of fraud and misrepresentation, that the agreement was tentative only—and not final. This also failed upon the facts.

At the time of the agreement, the plaintiff was badly in default under his mortgages; and, when it became known that the sale to the defendant would not be carried out, the mortgagees sold, and there was no surplus.

To compel specific performance now would be to oblige the defendant to convey his equity for nothing. The defendant con-