

## HIGH COURT OF JUSTICE.

KELLY, J.

JUNE 7TH, 1912.

## RE COUTTS AND LEBCEUF.

*Will—Devise of Land not Owned by Testator—Misdescription  
—Intention—Evidence—Vendor and Purchaser.*

An application under the Vendors and Purchasers Act.

J. A. Walker, K.C., for the vendor.

A. Clark, for the purchaser.

KELLY, J.:—Jane Coutts, claiming to be devisee under the will of her husband, Alexander Coutts, of the north half of the north half of lot 11 in the 5th concession of the township of Tilbury East, in the county of Kent, agreed, in February, 1910, to sell these lands to Eugene Lebceuf. The purchaser objected to the title, on the ground that the property was not devised or disposed of by Alexander Coutts, and did not pass by his will, and that he died intestate as to it; and that, therefore, the vendor has no power to sell it.

Alexander Coutts made his will on the 17th April, 1875, and died on the 14th August, 1881. His wife, Jane Coutts, was appointed his executrix, and probate of the will was issued to her.

The first paragraph of the will is: "I give devise and bequeath all my lands and tenements goods and chattels as follows." Then, after devising to his son the south half of the north half of lot 11 in the 5th concession of Tilbury East, containing 50 acres more or less, and other lands, he devised to his wife, Jane Coutts, the vendor, for the benefit of his family, several parcels, including "the north half of the south half of lot number 11 in the 5th concession, containing 50 acres more or less;" and he did "also enjoin her to sell any portion or parcel of the lands willed to her at any time she may see fit or judicious."

At the time the will was made, and also at the time of his death, the testator was the owner of the north half of lot 11 in the 5th concession of Tilbury East, but was not then and never was the owner of or interested in the south half of that lot.

The will shews an intention on the part of the testator to dispose of all his lands and tenements, etc. Not owning the