

HORTON v. CASEY.

1893

HORTON v. HUMPHRIES.

*May 10, 12.

*June 24.

Title to land—Boundaries—Evidence—Title by possession—Acts of ownership.

APPEAL from a decision of the Court of Appeal for Ontario affirming the judgment at the trial in favour of the respondent in each case.

The respective respondents in these appeals brought actions against the appellant for trespass to land which were defended on the ground of want of title in the plaintiffs and title by possession in the defendant. At the trial evidence was given by plaintiff of a survey of the lands, and defendant's land adjoining, made in 1809, by one Burwell, a provincial land surveyor, in which, as he reported to the Crown Land Department, he had made a mistake owing to a bend in the circumference of his compass and which he corrected by moving the posts he had planted as the line was traced. The defendant claimed that the line as first run by Brunwell was the true line. As to possession the evidence was that defendant had cut timber on the land in dispute for many years and also tapped maple trees for sugar, but had not fenced the land until some six or seven years prior to the action.

The trial judge found that plaintiffs had respectively proved title to their land and that the acts of ownership shown by defendant were mere acts of trespass committed either wilfully or in ignorance as to boundaries and not such as would enable his possession to ripen into a title.

*PRESENT :—Sir Henry Strong C. J., and Fournier, Taschereau, Gwynne and Sedgewick JJ.

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The Supreme Court affirmed the decision of the Court of Appeal in both cases and dismissed the appeals.

Appeals dismissed with costs.

Glenn & Tremear for appellant *Horton*.

J. A. Robinson for appellant *Warner*.

Macdougall Q. C., & Robertson for respondents.

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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.*

1894

*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.