Indiana Law Journal

Volume 8 | Issue 6 Article 5

3-1933

Real Property-Conditions Subsequent in Deeds

REAL PROPERTY—CONDITIONS SUBSEQUENT IN DEEDS—This action was brought to eject appellees from certain real estate and quiet title thereto. Appellees, by cross-complaint, seek to quiet title as against appellants. On October 11, 1880, N and his wife "conveyed and warranted" to the trustees of X church "and their successors in office" the real estate in question (one-half acre of land in consideration of thirty dollars) "in trust that said premises shall be kept and maintained as a place of worship for the use of X church, the building to be erected thereon free for all funeral services at all times and under all circumstances. It shall also be free for all orthodox denominations when not desired for use by the above named church."

A church was built, half on this half acre and half on the adjoining lot. April 21, 1930, the trustees conveyed the property to the appellees with covenants of warranty.

Appellants being sole heirs of N and his wife, both deceased, claim that the deed given by N and his wife granted an estate in trust upon conditions subsequent only and that the conveyance by the trustees to the appel-

---

[12] *Beander v. Barnett* (1921), (Calif.), 255 U. S. 224; *State v. Harris* (1923), (Ore.), 211 Pac. 944; *Nelson v. State* (1925), (Wis.), 203 N. W. 343; *State v. Gates* (1925), (N. D.), 204 N. W. 350; *Clayton v. State* (1927), (Ala.), 114 So. 787; *Jelks v. State* (1927), (Ga.), 137 S. E. 840; *State v. Anno* (1927), (Mo. App.), 296 S. W. 825.

[13] *Reynolds v. State* (1926), (Fla.), 111 So. 285.

[14] *Impellizeri v. State,* Supreme Court of Indiana, June 10, 1932.

[15] *Hart v. United States* (1898), 84 Fed. 799; *Vernon v. United States* (1906), 146 Fed. 121; *Tucker v. United States* (1915), 224 Fed. 833; *Weiner v. United States* (1922), 282 Fed. 799; *Sullivan v. United States* (1922), 282 Fed. 575; *Yusem v. United States* (1925), 8 Fed. (2nd) 6; *Noscowitz v. United States* (1922), 282 Fed. 575; *Ridenour v. United States* (1926), 14 Fed. (2nd) 888; *Van Gordner v. United States* (1927), 21 Fed. (2nd) 939; *Salinger v. United States* (1927), 23 Fed. (2nd) 48.

lees was a breach of these conditions and title thereby vests in the appellants as heirs at law of the grantors. Appellees contend that the deed contained no forfeiture clause and no conditions subsequent and that a fee simple title vested in the church upon the execution of the deed. *Held*—the deed did not contain conditions subsequent and the conveyance to the appellees did not operate so as to vest the title in the appellants as heirs in law of the named grantors.[1] The case is decided directly upon the decision in the case of *Taylor v. Campbell*.[2]

In *Taylor v. Campbell* it was decided that "a conveyance of land to trustees to erect a church thereon for use of members of the church according to the rules of that church and imposing no restraint on alienation and containing no provision for forfeiture, does not create a defeasible estate for the benefit of the grantor or a condition subsequent for the violation of which a forfeiture or reversion will result, but merely creates a trust enforceable at the instance of the church, but not at the instance of the grantor, and, when land has ceased to be used for the purpose specified, the trustees may sell it free and clear of any claims of the grantor or his heirs."

Words declaratory of the consideration for and the purpose of a conveyance, although a limitation of the use of the property, do not of themselves render an estate conditional.[3] The intention of the parties to it determines whether a deed is a conveyance in trust or one upon a condition working, when broken, a forfeiture of the estate, in case the language is such as to leave the instrument open to either construction.[4]

According to Gray[5] the remedy by entry for breach of conditions attached to a conveyance fell into disuse, because, when the condition was for the payment of money, which it usually was then, "equity would restrain a forfeiture, and in many cases enforce payment as a trust."

Again in Sugden:[6] "What by the old law was deemed a devise upon condition would now, perhaps, in almost every case, be construed a devise in fee upon a trust, and, by this construction, instead of an heir taking advantage of the condition broken, the *cestui que* trust can compel an observance of the trust by a suit in equity.

There is a marked difference between a devise upon a condition subsequent for a specified religious or charitable purpose and one upon a trust to be devoted to a particular use.

A condition broken forfeits the estate and forever deprives the devisee of the gift, while the heirs become seized of the first estate free of intermediate charges or incumbrances and of expenditures and improvements upon the premises.[7] If the limitations are simply regulations to guide the trustees and explanatory of the terms upon which the devise was made a

---

[1] *Newell v. The Success Grauge No. 2185 of Elkhart County, Indiana, Inc.*, Appellate Court of Indiana, July 26, 1932.

[2] (1912), 50 Ind. App. 515, 98 N. E. 657.

[3] 6 Am. & Engl. Ency. Law (2d Ed.), pp. 501, 502.

[4] *Neely v. Hoskins* (1892), 84 Me. 386, 24 Atl. 882; *Hayes v. St. Paul M. E. Church* (1902), 196 Ill. 633, 63 N. E. 1040; *Brown v. Caldwell* (1883), 23 W. Va. 187, 48 Am. Rep. 376; *Sheets v. Vandalia R. Co.* (1920), 74 Ind. App. 597, 127 N. E. 609.

[5] Gray, "Perpetintics", Sec. 282, note.

[6] 1 Sugden, "Powers" (8th Ed.) 106.

[7] *Stanley v. Colt* (1867), 5 Wall. 119, 18 L. Ed. 502.

trust is created which those who take the estate are bound to perform and in case of breach, equity will step in and compel performance. The estate is preserved and devoted to the use prescribed by the devisor and his heirs can not resume it.[8]

There is little doubt that presumptions are adverse to the defeasance of estates and doubts will be construed against such restrictions as might so operate,[9] however, where the intention of the grantor is clear and the words used fairly express his intention to create a condition the courts will give effect to the condition.[10]

Nevertheless, it appears that most courts are strongly inclined to construe devises to religious societies, specifying the use to which the estate is to be devoted as devises in trust.[11]

Once the land is given to the trustees of a church it is not subject to a reversionary interest in the heirs of the grantor nor in the grantor himself.[12] The theory is that there is title coupled with a trust.[13] In case of a palpable breach of trust equitable aid may be invoked by some one leaving an interest in the specific carrying out of the trust to compel its execution by the devisee.[14]

Thus it appears "where the language of the clause in the deed indicates the simple purpose to define and regulate the use which shall be made of real granted, and where it doesn't appear the use is for the special benefit of the grantor and his heirs, it will not be construed as a condition subsequent."[15] E. L. L.

TEACHERS' TENURE LAW—CONSTITUTIONALITY—POWER TO DISMISS PERMANENT TEACHERS—The plaintiff, a school teacher, had been employed by the defendant school city for more than five years prior to May 5, 1930. On that date he entered into a new contract, under which he served until July 24, 1931, at which time he was discharged as a result of a hearing held by the defendant in which it was found that he had been guilty of insubordination in refusing to obey a reasonable regulation of the defendant—that is, that all teachers should retire when they attained the age of seventy. The

---

[8] *Stanley v. Colt* (1867), 5 Wall. 119, 18 L. Ed. 502.

[9] *Summer v. Darnell* (1870), 128 Ind. 38, 27 N. E. 162; *Sherman v. Town of Jefferson* (1916), 274 Ill. 294, 113 N. E. 624; *Sellers Chapel M. E. Church's Petition* (1891), 139 Pa. 61, 21 Atl. 145.

[10] *Sheets v. Vandalia Ry. Co.* (1920), 74 Ind. App. 597, 127 N. E. 609; *Van Horn v. Mercer* (1902), 29 Ind. App. 277, 64 N. E. 531.

[11] *Stanley v. Colt* (1867), 5 Wall. 119, 18 L. Ed. 502; *Schier v. Trinity Church* (1871), 109 Mass. 1; *Downer v. Rayburn* (1905), (Ill.), 73 N. E. 364; *First Presby. Church v. Bailey* (1916), 97 Atl. 583; 11 L. R. A. (N. S.) 509, note.

[12] *Bailey v. Wells* (1891), 82 Iowa 131, 47 N. W. 988; *Strong v. Doty* (1873), 32 Wis. 381; *Packard v. Ames* (1860), 16 Gray (Mass.) 327.

[13] *Mills v. Davison* (1896), 54 N. J. Eq. 659, 35 L. R. A. 113, 35 Atl. 1072; *Watterson v. Ury* (1894), 5 Ohio C. C. 347, Affirm. 52 Ohio St. 637, 44 N. E. 1149; *Schipper v. St. Palais* (1871), 37 Ind. 505.

[14] *Strong v. Doty* (1873), 32 Wis. 381; *Baldwin v. Atwood* (1854), 23 Conn. 367; *Rawson v. Uxbridge* (1863), 7 Allen 125, 83 Am. Dec. 670.

[15] *Hutchinson v. Ulrigh* (1893), 145 Ill. 336, 34 N. E. 556; *Farnham v. Thompson* (1885), 34 Minn. 330, 26 N. W. 9; *Rawson v. Uxbridge* (1863), 32 Wis. 381; *Sohier v. Trinity Church* (1871), 109 Mass. 1; *Neely v. Hockins* (1892), 84 Me. 386, 24 Atl. 882; *Episcopal City Mission v. Appelton* (1875), 117 Mass. 326; *Adams v. First Baptist Church* (1907), 148 Mich. 140, 111 N. W. 757.