

MEREDITH, C.J.C.P.

OCTOBER 28TH, 1909.

## RE ST. PATRICK'S MARKET.

*Deed—Construction—Condition Subsequent — Invalidity—Contingent Reversionary Interest.*

The Corporation of the City of Toronto having applied under the Quieting Titles Act for a certificate of title to the land known as St. Patrick's market, the appellants, among others, were notified of the proceedings, and filed claims to be entitled to a contingent reversionary interest in the land under the deeds given to the city corporation by the late D'Arcy Boulton, deceased, and the late Sarah Boulton, deceased, his wife, and their claims were disallowed by the Referee of Titles.

The land was conveyed by D'Arcy Boulton to the city corporation by deed dated the 8th June, 1837. The grant was to the corporation for the purpose of a public market, and the habendum was to the corporation and their successors "in trust for the use and purpose of establishing, keeping, and maintaining a public market for the benefit and advantage of the citizens of Toronto and others resorting thereto and for the public sale of all such articles and things as may be brought to the same, subject nevertheless to such rules and regulations," etc.

Following the habendum was a proviso in these words: "Provided always that if the said City of Toronto shall at any time hereafter alienate the said piece or parcel of land or any part thereof, or use or apply the same to any other use or purpose than for a public market as hereinbefore mentioned, then these presents and every matter and thing herein contained shall be utterly null and void to all intents and purposes whatsoever, and the said piece or parcel of land hereby conveyed shall from thenceforth revert to the said D'Arcy Boulton, his heirs and assigns, in as full and ample a manner as if these presents had not been made."

The appellants claimed under this proviso, as the heirs of D'Arcy Boulton.

H. T. Beck, for the appellants.

E. D. Armour, K.C., and H. Howitt, for the city corporation.

MEREDITH, C.J., held, following *In re Trustees of Hollis Hospital and Hague's Contract*, [1899] 2 Ch. 540, that the Referee of Titles rightly disallowed the claim of the appellants. In the case referred to it was held that the proviso was an express common law