

his heirs but if he does not sell Whiteacre within a year to B.; a gift of Blackacre to A. for his life, but if A. becomes bankrupt to B. and his heirs; a gift of Blackacre to A. until he dies or becomes bankrupt.† The first is an example of a condition precedent, the second and third are examples of a defeasance, the third is a conditional limitation.

We will first deal with the classes in which the restriction is attached to the property concerned itself, taking the subdivisions in turn.

In the first class, a gift is made on condition that the donee ties it up in some respect prior to the property vesting. *Turner v. Turner*, 4 O.L.R. 578, seems to be a case in point. An absolute interest was given to the testator's widow on condition that she should "make a will of her said estate providing for" certain children. If she did not do so, "instead" of the estate being so given, it was disposed of differently. It was held that the will could not be revoked. Such a limitation, however, seldom occurs.

The next class of cases, however, i.e., those in which there is an actual defeasance, is very important and often occurs. We will, therefore, deal with it rather fully.

So long as there is a defeasance it is immaterial whether it arises from a common law condition or executory devise or shifting use. "The general law is that a defeasance, either by condition or by conditional limitation or executory devise, cannot be well limited to take effect in derogation, not merely of the right of alienation, but of any of the natural incidents of the estate which it is intended to divest" (Kay, J., in *Dugdale v. Dugdale*, 38 Ch. D. 176, 181), and "an incident of the estate given, which cannot be directly taken away or prevented by the donor cannot be taken away indirectly by a condition which would cause the estate to revert to the donor, or by a conditional limitation or executory devise which would cause it to shift to another person" (ibid. 182). He quotes *Bradley v. Peixoto*, 3 Ves. 324; *Ross v. Ross*, Jac. & W. 154, and *Hobbes v. Gordon*, 8 D. M. & G. 152.

†The validity of these limitations will be discussed later.