

Chan. Div.

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.

[June 16.

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same way, both of which offers were declined; and as no maintenance was provided for him by her at the farm he treated the condition as broken, and brought an action of ejectment and recovered judgment, and conveyed the farm away by deed, and the defendant became the owner by subsequent conveyance.

In an action of ejectment by the infant daughter of T. S., claiming under the deed to her father against the defendant, it was

*Held* (affirming the judgment of ARMOUR, J., PROUDFOOT, J., dissenting), that the grantor was not bound to accept the offers made, and that the conditions of the deed were broken and the land forfeited.

*Per ARMOUR, J.*, at the trial.—The deed must be construed as being made upon condition, and as being defeated and rendered void by the nonperformance of the covenant, the effect of the covenant is that H. S. was to be maintained wherever he might choose to live, but he was not bound to go to any place the covenantor or his representatives might require him to go, and he was justified in refusing to accept the offers made.

*Per BOVD, C.*—The parent who for value purchases the right to support from his son has, if the written instrument is silent on the point, the first and controlling choice as to the place of abode. If the father's wishes are reasonable, having regard to his age and station in life, the court ought to respect these in preference to the counter propositions of those who are to supply the maintenance. There was here no caprice, no unwarrantable obstinacy in the father's resolve to cling to the homestead, such as should induce the court to disregard the general rule. The result is that the conditions of the deed were broken and the land forfeited.

*Per PROUDFOOT, J.*—The life interest of H. S. was not reserved out of the land; it rested solely on the condition with probably an equitable charge on the land. The condition is to maintain without specification of place; it imposes no personal obligation on the grantee, it may be fulfilled by any one having an interest in the property, and may be performed wherever the grantee or his representative might reasonably offer.

*Per FERGUSON, J.*—It was a condition annexed to the estate granted, the proper effect of which was that if broken the title would go to the grantor

or those claiming from him the reversion in the lands. The grantor was not bound to accept the offer that was made and there was a breach of the condition, the effect of which was to revert the estate.

*Shepley*, for the plaintiff.

*Moss, Q.C.*, for the defendant.

Ferguson, J.]

[June 29.

KENNEDY ET AL. V. THE CORPORATION  
OF THE CITY OF TORONTO ET AL.

*Patent subject to condition—Trust—Crown's rights—  
Private Act—Provincial Legislature—Ordinance  
lands—Intra vires—Interpretations.*

Certain ordinance lands vested in the Crown were in 1858 patented to the Corporation of the city of Toronto with the following clause in the patent "Provided always, and this grant is subject to the following conditions, viz: that (the land) . . . shall be dedicated by the said (corporation), and by them maintained for the purposes of a public park, for the use, benefit and recreation of the inhabitants of the said city of Toronto for all time to come . . ." The Corporation of Toronto in 1876 obtained from the Ontario Legislature an Act empowering them to lease, sell, or otherwise dispose of "the said land, and one of their committees transferred it to another to use as a cattle market, receiving a yearly rent therefor, which they applied to a park fund as provided by the Act giving the power to sell, etc."

In an action by a ratepayer to prevent the land being used as a cattle market, and more money being spent on it for that purpose, in which it was contended that the land was granted upon a condition under which the Crown might retake it, and that the Act of the Provincial Legislature was so *ultra vires* in dealing with it, it was

*Held*, on demurrer that the words in the patent "Provided always, and this grant is subject to the following conditions," did not create a condition annexed to the estate granted, but a trust was created the same as if the words used had been "upon the following trust," and that by the grant the grantors parted with all their estate and interest; that the matter came within sub-sec. 13 of sec. 92, B. N. A. Act, "Property and civil rights in the Province" and the Provincial Legislature was the proper one to legislate on the subject, and the Act was not *ultra vires*.