

In *In re Smith* (1899), 1 Ch. 331, the widow of a settlor died in 1899, leaving a will bequeathing personalty to be held on trust for the person entitled to the ownership and enjoyment of the settled estate, with a gift over in the event of a sale of the settled real estate. It was held that the gift over was inoperative when a sale was made under the Settled Land Act.

In *Re Fitzgerald* (1902), 1 Ir. R. 162, M.R., in a will a house was left to A.B. and a certain income for life or so long as she resided at the house. It was held that the gift over was void under the Settled Land Act.

What conditions are repugnant to an estate in land? It is, from the nature of the question, impossible to answer it exhaustively, nor does it come within the scope of this sketch to do so. I will merely try to give a few of the more typical and modern decisions on this point, but first some preliminary remarks must be made.

In interpreting a will an apparent condition need not necessarily be held to be such. Thus in *Edgeworth v. Edgeworth*, 4 H.L. 35, application was made of the rule that where an estate has been plainly given by a will, it is not from subsequent words to be treated as given upon a condition, if these words are capable of being read as the description of an event, on which the gift is to come into existence. Gifts were made to A., B. and C. for their lives, subject to the preceding donee dying without issue; A.'s children were to take in a certain way and "in case B. should come into possession of the said estate hereinbefore limited to him and should die leaving issue, said issue to take in like manner." The words "should come into possession" was held not to constitute a condition prevented the son taking.

But if once there is a condition, its repugnancy does not depend on the length of time for which it is imposed. Thus in *In re Rocher*, *supra*, a fee simple was given with a prohibition against alienation during the widow's lifetime and this was held to be bad. The same result was arrived at in *Renaud v. Tourangeau*, L.R. 2 P.C. 4, where it was sought to prevent the devisee encumbering the land for twenty years from the donor's death.