

This question, which was expressly left open by Chitty, J., has since been decided. In *In re Leach* (1912), 2 Ch. 422, there was a devise of real estate upon trust to pay the income to the testator's nephew till he should assign, charge or otherwise dispose of the same or become bankrupt, which of the said events should first happen, and if this trust should determine in the nephew's lifetime, to accumulate for the male heir of his body and should he die without a male heir, to other persons.

In the course of his judgment Joyce, F., said: "Pausing at the words, 'which of the said events shall first happen,' and for the moment neglecting what follows, I consider it to be clear that Robert takes in Martock and the freeholds an equitable fee simple qualified or determinable, similar to the first estate which the intended husband ordinarily takes in a settlement on marriage of his real estate. . . . This limitation to Robert of a determinable fee simple appears to me to be free from objection in every respect, notwithstanding what may have been said in any book as to the effect of the Statute of Quia Emptores upon the creation of estates in fee simple determinable or qualified. Upon this part of the case I may refer to page 144 of Lewin on Trusts, 12 ed., and pp. 61 and 192 of Goodeve's Law of Real Property, 5th ed., and there are other authorities. . . . I think that what Robert takes is an equitable estate in fee simple determinable in the event of his assigning, charging, or becoming bankrupt, etc., which estate if he dies without assigning, charging or becoming bankrupt, etc., becomes an ordinary estate in fee simple, but subject to the executory limitation over to the testator's nephews in the event of Robert dying without leaving any male heir of his body at the time of his decease." (The judgment was without prejudice to the heir or male heir of the body claiming by purchase.)

This decision is in direct contradiction to the dictum of Kekewich, J., in *Metcalfe v. Metcalfe*, 43 Ch. D. 633, 639. "You cannot limit an estate to a man and his heirs until he shall convey to a stranger, because it is of the essence of an estate in fee that it confers free power of alienation, and it has long been