

Toronto by deed dated June 8, 1837. The grant was to the corporation for the purpose of a public market. 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." After the habendum was the following proviso: "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 manner as if these presents had not been made." The appellants claimed to be entitled to a contingent reversionary interest in the land as heirs of the grantor.

*Held*, that the Referee of titles properly disallowed the appellants' claim, following *In re Trustees of Hollis Hospital and Hague's Contract* (1899), 2 Ch. 540, where it was held that such a proviso was an express common law condition subsequent, and obnoxious to the rule against perpetuities which was applicable to such condition and therefore void. The grant in this case was of the whole estate of the grantor subject to a condition that the grant should revert to the grantor, his heirs and assigns upon the happening of the event with which it deals and was not a conveyance granting the land to the corporation so long as it should be used as a public market. See *In re Ashworth* (1905) 1 Ch. 535; *Law Quarterly Review*, vol. 16, p. 10; *Attorney-General v. Pyle*, 1 Atk. 435.

*Beck*, for appellants. *Armour*, K.C., and *H. Howitt*, for City.

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Divisional Court—Chy.] *WEBB v. BOA*

[Oct. 28.

*Landlord and tenant—Illegal distress—Double value of goods—Costs.*

Appeal by plaintiff from judgment of TEETZEL, J. Action for illegal and excessive distress for rent. The trial judge gave judgment for plaintiff for the appraised value of the goods and