

The devise was to "the Corporation of the Town of Mitchell" and the habendum to "the said Corporation of Mitchell and its successors forever." The proviso was, that if the corporation neglected or refused to keep up the park and the fences in proper order, etc., the lands should revert to and form part of the testator's estate. According to the authorities the proviso was an express common law condition subsequent, obnoxious to the rule against perpetuities, and therefore void. If the land had been granted to the corporation so long as it should be used and maintained and kept in proper order and repair and as a public park should be kept, the result might have been different, but it had been granted forever, and the proviso was wholly inoperative.

The case was practically on all forms with *Re St. Patrick's Market* (1909), 1 O.W.N. 92.

The appeal should be dismissed, but without costs.

MAGEE, J.A., and LATCHFORD, J., agreed with MACLAREN, J.A.

MASTEN, J., agreed in the result, for reasons stated in writing. He expressed no opinion upon the question whether the proviso was void as being obnoxious to the rule against perpetuities.

*Appeal dismissed without costs.*

FIRST DIVISIONAL COURT.

DECEMBER 19TH, 1919.

JERMY v. HODSON.

*Vendor and Purchaser—Agreement for Sale of Land—Construction—Legal Title not in Vendor—Time for Making Conveyance—"All Reasonable Diligence to Obtain Title"—Action for Return of Purchase-money—Provision as to Time—Waiver—Absence of Notice to Convey within Reasonable Time—Vendor not in Default—Finding of Trial Judge—Appeal.*

Appeal by the plaintiff from the judgment of ROSE, J., 15 O.W.N. 323.

The appeal was heard by MACLAREN and MAGEE, JJ.A., and LATCHFORD and MASTEN, JJ.

G. S. Gibbons, for the appellant.

R. D. Moorhead, for the defendants, respondents.

The judgment of the Court was read by MAGEE, J.A., who said that the appeal was by the plaintiff from a judgment dismissing