

## Real Property--Estates on Condition--Evidence (Wagstaff v. Ingersoll et al., 156 Misc. 24 (Sup Ct. 1935))

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country.<sup>4</sup> This is logically so since this is a new country and the records of our governmental acts have been comparatively well kept. Prescriptive right is based on the theory of a lost grant<sup>5</sup> which is almost as difficult to support logically in this, a new country, as a lost governmental act. Where a group of people is concerned, a more logical basis to establish the right would be dedication. In order to constitute a dedication there must be clear intent,<sup>6</sup> but there need not be a grantee in existence capable of taking the grant.<sup>7</sup> It is submitted that intent could be inferred from long user as easily as a lost grant or governmental act. It follows therefore, if the plaintiffs here had been organized as a village (capable of taking the grant), or if the claim had been based on dedication, there would have been grounds to overrule the motion to dismiss the complaint but with custom alleged as the sole basis of the right it is hard to find fault with the decision.

G. F. J.

REAL PROPERTY—ESTATES ON CONDITION—EVIDENCE.—The plaintiff's grandfather deeded property to the defendant on the express condition that a church be built thereon and devoted in perpetuity to divine worship. Right of re-entry was reserved in case of breach. After complying for a number of years with the grantor's wishes, the defendant leased the premises. While the lessee was in possession the interior of the church was remodeled. A dance floor was laid. A part of the new furnishings consisted of a pool table, a card table and a bowling alley. Beer and liquor were dispensed therein and on several occasions the premises were subleased for political rallies, boxing bouts and smokers. In an action in ejectment brought by the heirs of the grantor, *held*, plaintiff entitled to premises, as this was a conveyance on condition subsequent, and the court will take judicial notice that the use to which the premises were put was violative of the express condition in the deed. *Wagstaff v. Ingersoll et al.*, 156 Misc. 24, 279 N. Y. Supp. 518 (Sup. Ct. 1935).

Whenever possible the law favors the settling of title and in the absence of a right to re-enter reserved in the deed, the courts will

<sup>4</sup> *Post v. Pearsall*, 22 Wend. 425 (N. Y. 1838); *Graham v. Walker*, 78 Conn. 130, 61 Atl. 98 (1905); *Ackerman v. Shelp*, 8 N. J. L. 125 (1825); *Albright v. Cortright*, 64 N. J. L. 330, 45 Atl. 634 (1900).

<sup>5</sup> *Moore v. Day*, 199 App. Div. 76, 191 N. Y. Supp. 731, *aff'd*, 235 N. Y. 554, 139 N. E. 732 (1921).

<sup>6</sup> *Holdane v. Trustees of Village of Cold Spring*, 21 N. Y. 474 (1860); *N. Y. Cent. & Hud. River R. R. v. Village of Ossining*, 207 N. Y. 648, 100 N. E. 1131 (1910); *In re West 172d St.*, New York City, 171 App. Div. 242, 157 N. Y. Supp. 399 (1st Dept. 1916).

<sup>7</sup> *City of Cincinnati v. White*, 31 U. S. 431 (1832); *Buffalo, L. & R. Ry. v. Hoyer*, 214 N. Y. 236, 108 N. E. 455 (1915).

construe the express conditions as covenants whose breach does not work a forfeiture.<sup>1</sup> In these situations where the right of re-entry is reserved the breach must be substantial and not merely technical.<sup>2</sup> The breach of itself is not sufficient to divest title; there must be a re-entry on the part of the grantor and his heirs.<sup>3</sup> This right of re-entry is merely a possibility and can neither be assigned, conveyed, devised or mortgaged but accrues to the heirs as representatives of the original grantor.<sup>4</sup> If the person entitled to re-enter commences an action in ejectment, forfeiture is accomplished and a conveyance is necessary to restore title to the grantees.<sup>5</sup> On the other hand, the person having the right to re-enter may waive the breach and be estopped from asserting any claim to the premises for that particular breach.<sup>6</sup> The statutes on expectant estates do not apply to possibilities,<sup>7</sup> and as these possibilities were not alienable or devisable on common law, their status remains the same.<sup>8</sup>

M. E. McC.

TAXATION—TAXING TO PROVIDE FOR THE GENERAL WELFARE—CONSTITUTIONAL LAW.—In 1933 the government, as part of its economic emergency program, enacted the Agricultural Adjustment Act.<sup>1</sup> The essential features of the "A. A. A." made provision for stabilization of prices on agricultural products through the medium of benefit payments to farmers for curtailment of production. Appropriation

<sup>1</sup> *Nichol v. N. Y. & Erie R. R.*, 12 N. Y. 121 (1854); *Avery v. N. Y. C. etc. Ry.*, 106 N. Y. 142, 12 N. E. 619 (1887); *Post v. Weil*, 115 N. Y. 361, 22 N. E. 145 (1889); *Graves v. Deterling*, 120 N. Y. 447, 24 N. E. 655 (1890); *Cunningham v. Parker*, 146 N. Y. 29, 40 N. E. 635 (1895).

<sup>2</sup> *Riggs v. Purcell*, 66 N. Y. 193 (1876); *Woodsworth v. Payne*, 74 N. Y. 176 (1878); *Rose v. Hawley*, 141 N. Y. 366, 36 N. E. 335 (1894).

<sup>3</sup> *Nichol v. N. Y. & Erie R. R.*, 12 N. Y. 121 (1854); *Plumb v. Tubbs*, 41 N. Y. 442 (1869); *Moore v. Pitts*, 53 N. Y. 85 (1873); *Conger v. Duryee*, 90 N. Y. 594 (1881); *Uppington v. Corrigan*, 151 N. Y. 143, 45 N. E. 359 (1896); *Trustees, etc. v. City of N. Y.*, 173 N. Y. 38, 65 N. E. 853 (1903).

<sup>4</sup> *Nichol v. N. Y. & Erie R. R.*, 12 N. Y. 121 (1854); *Uppington v. Corrigan*, 151 N. Y. 143, 45 N. E. 359 (1896).

<sup>5</sup> *Ludlow v. N. Y. & Har. Ry.*, 12 Barb. 440 (N. Y. 1852); *Conger v. Duryee*, 90 N. Y. 594 (1881).

<sup>6</sup> *Hunter v. Osterhandt*, 11 Barb. 33 (N. Y. 1851); *Ludlow v. N. Y. & Har. Ry.*, 12 Barb. 440 (N. Y. 1852); *Ireland v. Nichols*, 46 N. Y. 413 (1871); *Conger v. Duryee*, 90 N. Y. 594 (1881); *Miller v. Prescott*, 163 Mass. 12, 39 N. E. 409 (1895).

<sup>7</sup> N. Y. REAL PROP. LAW (1909) § 35; *Vail v. Long Island R. R.*, 106 N. Y. 283, 12 N. E. 607 (1887); *Griffen v. Shepard*, 124 N. Y. 70, 26 N. E. 339 (1891).

<sup>8</sup> *Towle v. Remson*, 70 N. Y. 312 (1877); *Uppington v. Corrigan*, 151 N. Y. 143, 45 N. E. 359 (1896).

<sup>1</sup> 48 STAT. 31, 7 U. S. C. A. 601 *et seq.* (1933).