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FUTURE INTERESTS-DEEDS-CONSTRUCTION OF LANGUAGE TO CREATE A TRUST AND A CONDITION SUBSEQUENT

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FUTURE INTERESTS—DEEDS—CONSTRUCTION OF LANGUAGE TO CREATE A TRUST AND A CONDITION SUBSEQUENT—A deed conveyed land to a named schoolmaster of Bristol and his successors forever “for their support for instruction of the children of the town, . . . Provided always . . . that if the said town shall neglect to place a good and sufficient Grammar schoolmaster in the said town at the death or removal of any schoolmaster . . . for the space of twelve months after the said death or removal, that the land shall revert to me . . . and my heirs as fully and as effectively as if this deed had not been made and executed.” In a bill in equity for the construction of the deed, *held*, the deed conveyed a fee simple in trust upon a condition subsequent which reserved a right of reverter in the grantor and his heirs. *Bristol v. Nolan*, (R.I. 1947) 53 A. (2d) 466.

When land is conveyed for a specified purpose or upon express stipulations as to its use, courts have treated the language as creating a covenant,¹ an equitable charge,² a trust,³ or a condition subsequent.⁴ A deed will not be interpreted to create a forfeitable estate upon a condition subsequent unless the language unequivocally indicates such an intent.⁵ The fact that the deed is given voluntarily or for nominal consideration will not, by itself, raise a condition.⁶ Use of such words as “upon condition” or “providing that” *prima facie*

¹ *Boone Biblical College v. Forrest*, 223 Iowa 1260, 275 N.W. 132 (1937) (conveyance to college for educational and religious purposes); *Victoria Hospital Assn. v. All Persons*, 169 Cal. 455, 147 P. 124 (1915); *Berkley v. Union Pac. R. Co.*, (C.C. Colo. 1888) 33 F. 794 (conveyance to railroad reciting that part of the consideration was grantee's promise to erect a depot on land).

² *Jacobs v. Ditz*, 260 Ill. 98, 102 N.E. 1077 (1913); *Votapka v. Votapka*, 136 Kan. 224, 14 P. (2d) 732 (1932).

³ See *Olcott v. Gabert*, 86 Tex. 121, 23 S.W. 985 (1893), which involved a conveyance to a Bishop for the benefit of the church; and *South Kingstown v. Wakefield Trust Co.*, 48 R.I. 27, 134 A. 815 (1926), where the deed recited that it was given for the purpose of maintaining a schoolhouse and for no other purpose.

⁴ See notes 7-9, *infra*.

⁵ *Bd. of Education v. Long*, (N.Y. App. Div. 1945) 52 N.Y.S. (2d) 323; *Bd. of Education of Taylor County v. Bd. of Education of Campbellsville*, 292 Ky. 261, 166 S.W. (2d) 295 (1942). For collection of cases, see 116 A.L.R. 76 (1938).

⁶ *Second Universalist Society v. Dugan*, 65 Md. 460, 5 A. 415 (1886); *Farn-*

create a conditional estate,⁷ although it is sometimes said that in addition there must be an express or implied right of reverter if the grantee does not perform.⁸ Where the restriction upon the land's use is accompanied by a provision for reversion upon failure of such use, the stipulation is generally regarded as a condition subsequent.⁹ When the grantee is a public or charitable institution or, as in the principal case, an officer thereof, and the land is given for a specific purpose, the tendency to construe the language as creating a trust, unfettered by conditions of forfeiture, goes beyond even the above rules. Thus, such a clause as "said property conveyed being intended for public school purposes and being conveyed upon that understanding," has been treated as surplusage;¹⁰ a conveyance to a school district for the purpose of creating on the land a school building and "for no other purpose whatsoever" has been held to create a condition subsequent,¹¹ and the unequivocal term, "provided that and this is on express condition that the town shall erect within five years specified buildings and maintain same" has been considered ineffectual to create a conditional estate.¹² But judicial liking for the trust device has usually stopped short of denying validity to a clearly expressed restriction which contains a provision for reversion of the estate for breach of condition. So, if the conveyance is upon a condition precedent, creating a possibility of reverter,¹³ or upon a condition

ham v. Thompson, 34 Minn. 330, 26 N.W. 9 (1885). Cf. I PROPERTY RESTATEMENT, § 45, p. 144 (1936), where it is stated that in determining whether a limitation creates a power of termination, the amount of consideration paid for the transfer of land is "pertinent and significant."

⁷ 19 AM. JUR., Estates, § 63, p. 524, and cases there cited.

⁸ I PROPERTY RESTATEMENT, § 45 (1936); *Munro v. Syracuse, L.S. & N.R. Co.*, 200 N.Y. 224, 93 N.E. 516 (1910); *Mickleson v. Gypsy Oil Co.*, 110 Okla. 117, 238 P. 194 (1925).

⁹ *Moss v. Crabtree*, 245 Ala. 610, 18 S. (2d) 467 (1944) (deed to school trustees to be used for school purposes and for failure to so use the land, to revert to a larger tract from which it was taken); *Langley v. Chapin*, 134 Mass. 82 (1883) (conveyance upon condition that grantee erect upon premises a cotton factory within two years); *Ellis v. Elkhart Car Works Co.*, 97 Ind. 247 (1884) (deed on condition that land shall revert on failure for six months to manufacture cars on premises).

¹⁰ *Board of Education v. Long*, (N.Y. App. Div. 1945) 52 N.Y.S. (2d) 323; see also *Bd. of Education of Taylor County v. Bd. of Education of Campbellsville*, 292 Ky. 261, 166 S.W. (2d) 295 (1942).

¹¹ *South Kingstown v. Wakefield Trust Co.*, 48 R.I. 27, 134 A. 815 (1926), where the grantee was allowed to sell land when further use for school purposes became impracticable.

¹² *Providence v. Payne*, 47 R.I. 444, 134 A. 276 (1926), where the restriction was characterized as a mere "earnest expression of a direction to the town as to the mode of administration."

¹³ *Allemannia Fire Ins. Co. v. Winding Gulf Collieries*, (D.C. W. Va. 1945) 60 F. Supp. 65, where the conveyance was to the board of education for public school purposes, and stating that when property shall cease to be used for school purposes it shall revert to grantor and heirs); *Board v. Buck*, 79 N.J. Eq. 472, 82 A. 418 (1912),

subsequent, reserving a power of termination,¹⁴ the restrictions will be enforced. The principal case is noteworthy in that the court found in the conveyancing language not only the creation of a charitable trust, but also a valid reverter to the grantor and heirs for breach of the express condition. This dual construction has generally been avoided in similar cases by the practice of choosing alternatively between the imposition of a trust and the creation of a condition subsequent,¹⁵ but such a construction here gives effect to the clearly expressed intention of the grantor and the result is therefore desirable.¹⁶

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where restriction was construed to create a determinable fee; and *Williams v. Kirby School District*, 207 Ark. 458, 181 S.W. (2d) 488 (1944).

¹⁴ See note 9, *supra*.

¹⁵ See, for example, *Moss v. Crabtree*, 245 Ala. 610, 18 S. (2d) 467 (1944) (provision that failure to use the land for school purposes would cause a reversion, held to create a condition and not a trust); *Bd. of Education v. Trustees of First Baptist Church*, 63 Ill. 204 (1872) (deed of land to be used for church purposes only but if the use ceases the grantee shall pay a certain sum and have an absolute title, held to create a condition subsequent only); *MacKenzie v. Trustees of Presbytery of Jersey City*, 67 N.J. Eq. 652, 61 A. 1027 (1905) (conveyance to church trustees on condition that church shall be kept in repair and for default the premises to vest in another charitable institution, held to create a trust and not a condition subsequent).

¹⁶ A similar result was reached in *Northwestern University v. Wesley Memorial Hospital*, 290 Ill. 205, 125 N.E. 13 (1919).