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The Possibility of Reverter in Colorado

By CHARLES MELVIN NEFF*

(Continued from April Issue)

Said the court:

"In the present deed there are no words indicating an intent that the grant is to be void if the declared purpose is not fulfilled. The deed contains no words which indicate an intention that, if the grantee omitted to use the estate for church purposes, the same should thereupon be forfeited, and should revert to the heirs of the grantor.

"It is an elementary proposition of law that conditions subsequent are not favored by the law, because on the breach of such conditions there is a forfeiture, and the law is adverse to forfeitures. 4 Kent's Commentaries 130; *Stanley v. Colt*, 5 Wall. (72 U. S.) 119, 18 L. Ed. 502; *Kilpatrick v. City of Baltimore*, 81 Md. 179, 31 A. 805, 27 L. R. A. 643, 48 Am. St. Rep. 509. Hence a condition will not be raised by implication from a mere declaration in the deed that the grant is made for a special and particular purpose, without being coupled with words appropriate to make such condition. *Packard v. Ames*, 16 Gray (82 Mass.), 327.

"Where the language employed declares a condition and imports a forfeiture, a clause of re-entry is not necessary, but we cannot insert into this deed, by mere judicial construction, words signifying a condition and reversion to the grantors in the event the condition is broken.

"In *Curtis v. Board of Education of City of Topeka*, 43 Kan. 138, 23 P. 98, where the conveyance was to the school board of a certain district, and their successors in office, for the erection of a schoolhouse thereon, and for no other purpose, the court used these words:

"They in effect create a covenant that the property shall be used in a particular way. * * * There are no words in the deed stating that the estate was or should be conveyed "upon condition," or that it might be "forfeited" under any circumstances whatever, or that the estate might under any circumstances "revert" to the grantors or their heirs, or that they might under any circumstances ever have the right to "re-enter" the premises."

"The court declared in this case, in the syllabus, that the evidence did not create an estate upon condition either precedent or subsequent, but that the words for the erection of a schoolhouse

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thereon, and for no other purposes, constituted only a limitation upon the manner in which the property should be used. The court went on to state in the syllabus that conditions subsequent which render estates already vested liable to be forfeited are never favored in law; and no deed will be construed as creating such a condition unless the language to that effect is so clear that no room is left for any other construction.

"This is the precise situation with regard to the deed in question here. There are no words of condition or forfeiture in the deed. There is no reverter clause, nor any provision establishing the right of re-entry. Hence, taking the deed by its four corners, it shows that the grantor intended to convey, and did convey, to the grantees all of his estate in the land." *(Continued in June Issue)*

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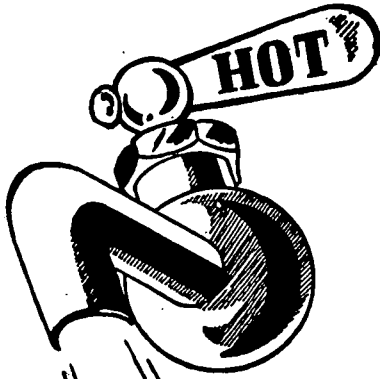
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