

1950

An Act respecting Real Property

Ontario

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R.S.O. 1897, CHAPTER 330

An Act respecting Real Property*(De Donis Conditionalibus, etc.)*

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. First, concerning lands that many times are given upon condition, that is to wit, where any giveth his land to any man and his wife, and to the heirs begotten of the bodies of the same man and his wife, with such condition expressed that if the same man and his wife die without heirs of their bodies between them begotten, the land so given shall revert to the giver or his heir: In case also where one giveth lands in free marriage, which gift hath a condition annexed, though it be not expressed in the deed of gift, which is this, that if the husband and wife die without heir of their bodies begotten, the land so given shall revert to the giver or his heir: In case also where one giveth land to another, and the heirs of his body issuing; it seemed very hard, and yet seemeth to the givers and their heirs, that their will being expressed in the gift, was not heretofore, nor yet is observed: In all the cases aforesaid, after issue begotten and born between them, to whom the lands were given under such condition, heretofore such feoffees had power to alien the land so given, and to disherit their issue of the land, contrary to the minds of the givers, and contrary to the form expressed in the gift: And further, when the issue of such feoffee is failing, the land so given ought to return to the giver, or his heir, by form of the gift expressed in the deed, though the issue, if any were, had died: Yet by the deed and feoffment of them to whom land was so given upon condition, the donors have heretofore been barred of their reversion, which was directly repugnant to the form of the gift: Wherefore . . . it is ordained that the will of the giver, according to the form in the deed of gift manifestly expressed, shall be from henceforth observed; so that they to whom the land was given under such condition, shall have no power to alien the land so given, but that it shall remain unto the issue of them to whom it was given after their death, or shall revert unto the giver or his heirs,

Several
sorts of
gifts of
lands upon
condition.

In such
gifts the
donor's will
shall be
observed.

if issue fail, either by reason that there is no issue at all, or if any issue be, and fail by death, or heir of the body of such issue failing. Neither shall the second husband of any such woman, from henceforth, have anything in the land so given upon condition, after the death of his wife, nor the issue of the second husband and wife shall succeed in the inheritance, but immediately after the death of the husband and wife, to whom the land was so given, it shall come to their issue, or return unto the giver, or his heir, as before is said. . . 13 Edw. I, (St. of Westminster Sec.), c. 1 (commonly called "The Statute *De Donis Conditionalibus*").

Freeholders may sell their lands so that the feoffee do hold of the chief lord.

2. Forasmuch as purchasers of lands and tenements of the fees of great men and other lords, have many times heretofore entered into their fees, to the prejudice of the lords to whom the freeholders of such great men have sold their lands and tenements to be holden in fee of their feoffers, and not of the chief lords of the fees, whereby the same chief lords have many times lost their escheats, marriages, and wardships of lands and tenements belonging to their fees; which thing seemed very hard and extreme unto those lords and other great men, and moreover in this case manifest disheritance: It is therefore provided, and ordained, that from henceforth it shall be lawful to every freeman to sell at his own pleasure his lands and tenements, or part of them, so that the feoffee shall hold the same lands or tenements of the chief lord of the same fee, by such service, and customs as his feoffer held before. 18 Edw. I, c. 1 (commonly called "The Statute *Quia Emptores*").

Sale of part.

3. And if he sell any part of such lands or tenements to any, the feoffee shall immediately hold it of the chief lord, and shall be forthwith charged with the services, for so much as pertaineth, or ought to pertain to the said chief lord for the same parcel, according to the quantity of the land or tenement so sold: And so in this case the same part of the service shall remain to the lord, to be taken by the hand of the feoffee, for the which he ought to be attendant and answerable to the same chief lord, according to the quantity of the land or tenement sold, for the parcel of the service so sold. 18 Edw. I, c. 2.

Apportionment of services.

Mortmain prohibited.

4. And it is to be understood, that by the said sales or purchases of lands or tenements, or any parcels of them, such lands or tenements shall in no wise come into mortmain, either in part or in whole, neither by policy nor craft, contrary to the form of the statute made thereupon. And it is

to wit, that this and the two preceding sections of this Act extend only to lands holden in fee simple. 18 Edw. I, c. 3.

* * * * *

11. Lineal and collateral warranties at common law, with all their incidents, are abolished; but the liability of the executors, or administrators, or devisees, of any person who shall have made any covenant, is unaffected by this section. (See 4 and 5 Anne, c. 3 (or c. 16 in Ruffhead's Ed.), s. 21.) 2 Edw. VII, c. 1, s. 7.

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