B. STATUTES DE DONIS AND QUIA EMPTORES

STATUTE OF WESTMINSTER SECOND, 13 Edw. I, c. 1
(*De donis conditionalibus*)

in J.H. Baker and S.F.C. Milsom (eds), *Sources of English Legal History* (1986) 48–50.[1]

First, concerning the frequent gifts of tenements upon condition, namely: when anyone gives his land to a man and his wife and to the heirs born of that man and that woman adding the express condition that if such man and woman die without heir born of that man and woman the land so given shall revert to the donor or his heir; and also in case where anyone gives a tenement in *liberum maritagium*, which gift has an inherent condition, although it may not be expressed in the charter of the [particular] gift, which is as follows, that if the man and woman die without heir born of themselves the tenement so given shall revert to the donor or his heir; and also in the case where anyone gives a tenement to [a donee] and to the heirs issuing from his body, it has seemed and still seems hard to the donors and to the heirs of donors that their will [as it is] expressed in their gift has not hitherto and still is not observed. For in all the aforesaid cases, after issue has been begotten and born of those to whom the tenements were so given conditionally, such feoffees have hitherto had the power of alienating the tenement so given disinheriting their issue of that tenement against the will of the donors, and the express form of the gift. And furthermore whereas upon failure of issue of such feoffees the tenement so given ought to revert to the donor or to his heir according to the form expressed in the charter of gift, [the donor or his heir] has hitherto been excluded from the reversion those tenements by the deed and feoffment of those to whom the tenements have been so given upon condition, notwithstanding that any issue [born of them] has died, which was clearly contrary to the form of the [donor's] gift.

And therefore the lord king, considering that it is necessary and useful to supply a remedy in the aforesaid cases has laid down that the will of the donor, according to the form clearly expressed in the charter of gift, shall henceforth be observed;[2] so that those to whom a tenement is so given upon condition shall not have power of alienating the tenement so given in such a way that it will not remain to the issue of those to whom it was so given after their death, or to the donor or to his heir if issue fails, whether because there was no issue at all or [because] there was issue but it failed by death without an the heir [of the body] of such issue. Nor from henceforth shall the second husband of such a woman have any [right] in a tenement so given upon condition after the death of his wife by the [curtesy] of England, nor shall the issue of the woman and her second husband [have any right of] hereditary succession. But immediately upon the death of the man and woman, to whom a tenement was so given, [the tenement] after their death [shall] either pass to their issue or shall revert to the donor or to his heir as is aforesaid.

And because in a new case a new remedy must be supplied, the demandant shall have writ like this:

"Command A. that he is justly, etc., to yield up to B such manor with the appurtenances which C. gave to such a man and such a woman and to the heirs issuing from that man and that woman; *or* which C. gave to such a man in *liberum maritagium* with such a woman, and which after the death of the aforesaid man and woman ought to descend to the aforesaid B., the son of the aforesaid man and woman, by the form of the aforesaid gift, as he says; *or*, which C. gave to [a donee] and to the heirs issuing from his body, and which after the death of that [donee] ought to descend to the aforesaid B., the son of that [donee] by the form [of the aforesaid gift]."

The writ by which the donor may have his recovery upon failure of issue is in common enough use in the Chancery.

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[1] For another translation see T. Plucknett, *A Concise History of the Common Law*, 5th ed. (1956) 551–2; see generally *id*. 546–57; *id*., *Legislation of Edward I* (1949) 129–35.

[2] rofessor Plucknett believed that the statute suffered a drastic and hasty amendment beginning after the words "henceforth be observed." For the argument, see *Legislation*, *op. cit.*.

And be it known that this statute shall apply to the alienation of a tenement contrary to the form of [any such] gift to be made hereafter, and shall not extend to gifts previously made. And if a fine shall hereafter be levied concerning such a tenement, it shall be void by [the operation of] the law itself, and there shall be no need for the heirs or those to whom the reversion belongs, even though [at the time of the fine] they are of full age and within England and not in prison, to put in their claim.

STATUTE OF WESTMINSTER THIRD, 18 Edw. I, c. 1
(*Quia emptores*)

in J.H. Baker and S.F.C. Milsom (eds), *Sources of English Legal History* (1986) 9–10.

Whereas the buyers of lands and tenements belonging to the fees of great men and other [lords] have in times past often entered [those] fees to the [lords'] prejudice, because tenants holding freely of such great men and other [lords] have sold their lands and tenements [to those buyers] to hold in fee [to the buyers] and their heirs of their feoffors and not of the chief lords of the fees, with the result that the same chief lords have often lost their escheats, marriages, and wardships of lands and tenements belonging to their fees; and this has seemed to the same great men and other lords [not only] very hard and burdensome [but also] in such a case to their manifest disinheritance:

The lord king in his parliament at Westminster after Easter in the eighteenth year of his reign, namely, a fortnight after the feast of St John Baptist, at the instance of the great men of his realm,[1] has granted, provided, and laid down that from henceforth it shall be lawful for any free man at his own pleasure to sell his lands or tenements, or [any] part of them; provided however that the feoffee shall hold those lands or tenements of the same chief lord and by the same services and customary dues as his feoffor previously held them. And if he sells to another any part of his same lands or tenements, the feoffee shall hold that [part] directly of the chief lord and shall immediately be burdened with such amount of service as belongs or ought to belong to the same lord for that part according to the amount of the land or tenement [that has been] sold; and so in this case that part of the service falls to the chief lord to be taken by the hand of the [feoffee], so that the feoffee ought to look and answer to the same chief lord for that part of the service owed as [is proportional] to the amount of the land or tenement sold. And be it known that through the aforesaid sales or purchases of lands or tenements or any part of them, those lands or tenements must in no way, in part or in whole, by any scheming or contriving, come into mortmain contrary to the form of the statute lately laid down on this matter. And be it known that this statute applies only to lands to be held in fee simple; and that it applies [only to sales to be made] in the future; and it is to take effect at the feast of St Andrew next coming.

[1] [The parliament was attended only by prelates and lay barons. S&M, p. 174 n.17.]