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Professor Agnor here traces the development of what he suggests is a bad rule of law which originated in a poor decision of a jurisdiction highly respected for its decisions on the law of future interests. The author's demonstration of how the case has been blindly followed by both bench and bar underscores his message that members of the legal profession must not rely on encyclopedic statements of the law without an examination into the policies and problems involved.

Some thirty years ago at the annual meeting of the Association of American Law Schools, one of the topics for discussion at the Property and Status Round Table was "Is Future Interests for the Few?"[1] This discussion had reference to the teaching of a course in Future Interests in law schools, but the same question can be asked of bench and bar today. For too many lawyers, the area is sort of a never-never land and they make no real attempt to understand the legal problems involved. Instead, they search for some encyclopaedic statement and accept it at face value. Such statements in an encyclopedia, or in a treatise or the *Restatement*, are too often taken from one poorly decided case that is not necessarily the best approach to the problem or even the majority approach. All too often in the area of future interests this has been a case decided by the Massachusetts court. The *Restatement* cites the case, then the Massachusetts court in a later case cites the *Restatement*, other citations follow, and the rule is refurbished in this fashion.

A major problem and source of bad law is the inclination of too many lawyers and judges today to rely on the nice encyclopaedic statement in the area of future interests rather than to really examine the problem and face the issues involved. As stated by the California Court of Appeals in an action by beneficiaries under a will for damages against an attorney engaged by testator to prepare the will:

> We agree the subject is difficult, but the law today has its specialties, and even as the general practitioner in medicine must seek the aid of the specialist in his profession, so the general practitioner in law, when faced with a problem beyond his capabilities, must turn to the expert in his profession to the end that his client is properly served.[2]

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1. A.A.L.S. PROCEEDINGS 140 (1933). It is interesting to note that another type at the same round table was "Should Personal Property be Dropped from the Law School Curriculum?"

2. Lucas v. Hamm, 11 Cal. Rptr. 727, 731 (Cal. App. 1961).

The statement by the Supreme Court of California in reversing the Court of Appeals is much more to the liking of the lazy lawyer. The court said:

> In view of the state of the law relating to perpetuities and restraints on alienation and the nature of the error, if any, assertedly made by defendant in preparing the instrument, it would not be proper to hold that defendant failed to use such skill, prudence, and diligence as lawyers of ordinary skill and capacity commonly exercise.[3]

It is the obligation of counsel to present the issues in a case to the court so that they may be considered properly. If counsel relies solely on encyclopaedic statements, the court is likely to follow and compound the error.

With full awareness of the dangers involved in tilting with windmills on hallowed ground, two Massachusetts cases will be considered. They are *First Universalist Society v. Boland*[4] and *Rice v. Boston & Worcester R.R.*[5]

The *First Universalist* case stands for a number of propositions, but only one is to be considered here. It held that where a determinable fee was followed by a conditional limitation over that was void for remoteness, it remained a determinable fee with a resulting possibility of reverter in the grantor. It is suggested that this was bad law, was poorly decided, and did not follow precedent. Gray attacked the case on several grounds, especially as to the approval of a determinable fee,[6] but in stating the rule as to the effect of the void limitation over he ignored the case and stated that the determinable fee would become a fee simple.[7] This is the only situation where a distinction has been drawn as to the nature of a defeasible fee when followed by an executory interest.

The difficulty in the case lies in a failure to recognize that two separate rules of property law are involved. One basic rule of the defeasible fee is that if the defeasing event be invalid for any reason, such as being illegal, immoral, impossible or repugnant, the defeasible fee becomes absolute, freed of the invalid event. Some of Blackstone's illustrations are now out of date.[8] Here the defeasing event is void for remoteness, so another principle comes into view. Under the Rule Against Perpetuities, when an end limitation is void for remoteness, prior estates remain just as created in the instrument,

3. Lucas v. Hamm, 56 Cal. 2d 583, 592, 364 P.2d 685, 690, 15 Cal. Rptr. 821, 826 (1961).
4. 155 Mass. 171, 29 N.E. 524 (1892).
5. 94 Mass. (12 Allen) 141 (1866).
6. GRAY, THE RULE AGAINST PERPETUITIES § 40 (3d ed. 1915).
7. *Id.* § 247 (4th ed. 1942).
8. 2 BLACKSTONE, COMMENTARIES *157.

absent application of the doctrine of "infectious invalidity." Thus in the *First Universalist* case, the court refused to reconcile the two principles and held that the determinable fee remained a determinable fee. The court cited and relied on the *Brattle Square* case,[9] but did not seem to understand it. The *Brattle Square* case clearly did not intend in any way to state any difference in its rule, whether the prior estate in defeasible fee could be called a determinable fee or a fee on condition subsequent. It is a clear and well reasoned decision and should have been followed. The court stated:

> Therefore a gift of the fee or the entire interest, subject to an executory limitation which is too remote, takes effect as if it had been originally limited free from any devesting [sic] gift. . . . Nor does it make any difference in the application of this well settled rule of law to the present case, that the testatrix in terms declares that the gift to the deacons and their successors shall be void, if the prescribed conditions be not fulfilled. The legal effect of all conditional limitations is to make void and terminate the previous estate upon the happening of the designated contingency, and to vest the title in those to whom the estate is limited over by the terms of the gift or grant. . . . The condition, being accompanied by a limitation over which is void in law, fails of effect, and the estate becomes absolute in the first takers.[10]

Quite a number of jurisdictions have had no trouble in applying this rule.[11] Had the *First Universalist* case properly followed the *Brattle Square* case, the difficulties in *Brown v. Independent Baptist Church*[12] would not have arisen. The church would have owned the land in fee simple, freed of the defeasing event. Instead, by finding a possibility of reverter in the grantor, the number and distribution of the heirs caused quite a problem.[13]

It is not intended here to consider at length the problem of the two possible solutions. The better rule seems obvious. Rather, it is intended to chart some of the path of the *First Universalist* case and the trap it has laid.

The most frequently used encyclopedias cite the *First Universalist*

9. Proprietors of the Church in Brattle Square v. Grant, 69 Mass. (3 Gray) 142 (1855).

10. *Id.* at 156, 159-60.

11. *E.g.*, Eaton v. Eaton, 88 Conn. 269, 91 Atl. 191 (1914); McGlothlin v. McElvain, 407 Ill. 142, 95 N.E.2d 68 (1950); Outland v. Bowen, 115 Ind. 150, 17 N.E. 281 (1888); McGaughey v. Spencer County Bd. of Educ., 285 Ky. 769, 149 S.W.2d 519 (1941); McMahon v. St. Paul's Reformed Church, 196 Md. 125, 75 A.2d 122 (1950); Rolfe & Rumford Asylum v. Lefebre, 69 N.H. 238, 45 Atl. 1087 (1898); Palmer v. Union Bank, 17 R.I. 627, 24 Atl. 109 (1892); Saxton v. Webber, 83 Wis. 617, 53 N.W. 905 (1892); Annots., 28 A.L.R. 375, 394 (1924); 75 A.L.R. 124 (1931); 168 A.L.R. 321 (1947).

12. 325 Mass. 645, 91 N.E.2d 922 (1950).

13. For a review of this problem, see Leach, *Perpetuities in Perspective: Ending the Rule's Reign of Terror*, 65 HARV. L. REV. 721, 741 (1952).

case as the authority for their stated rule, following it alone.[14] It does not appear to have been disputed by most text writers. Gray was so preoccupied in disclaiming the approval of the determinable fee in the *First Universalist* case that he did not consider the problem in detail, but does not seem to have accepted this rule.[15] Most other modern text writers seem to have meekly accepted this rule of the *First Universalist* case without question.[16] They fail to cite any of the numerous cases to the contrary. The *First Universalist* case was accepted as gospel by the American Law Institute and this caused a number of variations in their comments to accept all of its features.[17] In a monograph by the reporter, he states that the *Brattle Square* case might be contra, but says: "This extreme position is inconsistent with the weight of American authority, does not seem reasonable and has been rejected by the Restatement."[18] His "weight of authority" is the *First Universalist* case, two of its descendants, and one early New York case.[19]

It may be hard to build sand on sand, but with "*Restatement* glue" it seems possible. The Massachusetts court in two other cases has added to the *First Universalist* case the additional citation of the *Restatement* and used both as authority.[20]

It is one thing for a court to consider the principles involved and reach the same conclusion as the *First Universalist* case and quite another blindly to cite and follow it with no real understanding of the problem; and herein lies the danger. The Tennessee court added more bait to the trap by simply citing and following the case in *Yarbrough v. Yarbrough*.[21]

One annotator has accepted the *First Universalist* case as complete authority, even though he admits that it is contra to the *Brattle Square* case and other early Massachusetts cases.[22] Thus, the trap is set. One questionable case has fixed the statement of the law in most

14. 70 C.J.S. *Perpetuities* § 22 (1951); 19 AM. JUR. *Estates* § 34 (1939); 41 AM. JUR. *Perpetuities and Restraints on Alienation* §§ 31, 63 (1942).

15. GRAY, THE RULE AGAINST PERPETUITIES §§ 41, 247, 248, 312, app. E (4th ed. 1942).

16. *E.g.*, 6 AMERICAN LAW OF PROPERTY § 24.47 (1952); 2 POWELL, REAL PROPERTY ¶ 306 (1950); *but see* 5 POWELL, REAL PROPERTY ¶ 789 (1962); SIMES & SMITH, FUTURE INTERESTS §§ 823, 1263 (1956).

17. RESTATEMENT, PROPERTY §§ 44-47, 229 (1936); RESTATEMENT, PROPERTY §§ 372, 403 (1944).

18. RESTATEMENT, PROPERTY app. at 36-37 (1944).

19. Leonard v. Burr, 18 N.Y. (4 Smith) 96 (1858). *But cf.* Walker v. Marcellus & Otisco Lake Ry., 226 N.Y. 347, 123 N.E. 736 (1919).

20. Brown v. Independent Baptist Church, 325 Mass. 645, 91 N.E.2d 922 (1950); Institution for Savings in Roxbury v. Roxbury Home for Aged Women, 244 Mass. 583, 139 N.E. 301 (1923).

21. 151 Tenn. 221, 269 S.W. 36 (1925).

22. Annot., 45 A.L.R.2d 1154 (1956).

of the secondary authorities, so dear to the lawyer or judge in a hurry. The Virginia court accepted the rule.[23] The Arkansas court also based an opinion solely on the authority of the *First Universalist* case, saying that it was not aware of any decision to the contrary.[24] Another Arkansas case added citations to the *Restatement*, a treatise and another Massachusetts case.[25] The Mississippi[26] and the Missouri[27] courts followed along, citing mostly secondary authority descended from the *First Universalist* case. The Kansas court, not citing the usual sources, ruled to the contrary, although a restraint on alienation was also involved in that case.[28]

The Pennsylvania court fell headlong into the trap. Citing illustrations from the *Restatement*, the *First Universalist* case and its judicial descendants in Arkansas and Tennessee, the court completely accepted this rule.[29] In citing the *First Universalist* case, the court said that it had been cited with approval in over fifty decisions by appellate courts of twenty-six states.[30] A more careful check would have revealed that most of these citations had to do with the approval of the determinable fee, a fact not shown by Shepard's Citations. The court did not consider earlier Pennsylvania cases to the contrary,[31] nor a section of the Pennsylvania Estates Act of 1947 that states: "A void interest following a valid interest on condition subsequent or special limitation shall vest in the owner of such valid interest."[32] Whether these cases and the statute were not mentioned by counsel, or whether they were mentioned and ignored by the court, is best left to conjecture.

Thus, this rule from the *First Universalist* case has been accepted by most secondary authorities and by a half dozen states, largely without any real consideration of the principles involved. The resulting rule is not desirable. By way of illustration, suppose that *A* conveys land to a church in determinable fee, so long as used for church purposes, with an executory interest or conditional limitation to *B* (a noncharity). A hundred years later, church use ceases. Admittedly, *B*'s interest is void for remoteness. Under the the rule of the *First Universalist* case, *A* would have retained a possibility of reverter and it will be necessary to find his heirs. Under the better rule, the

23. County School Bd. v. Dowell, 190 Va. 676, 58 S.E.2d 38 (1950).
24. Fletcher v. Ferrill, 216 Ark. 583, 227 S.W.2d 448 (1950).
25. McCrory School Dist. v. Brogden, 231 Ark. 664, 333 S.W.2d 246 (1960).
26. Jones v. Burns, 221 Miss. 833, 74 So. 2d 866 (1954).
27. Donehue v. Nilges, 364 Mo. 705, 266 S.W.2d 553 (1954).
28. *In re* Dee's Estate, 180 Kan. 772, 308 P.2d 90 (1957).
29. *In re* Pruner's Estate, 400 Pa. 629, 162 A.2d 626 (1960).
30. *Id.* at 641, 162 A.2d at 633.
31. *E.g.*, Smith v. Townsend, 32 Pa. 434 (1859); Betts v. Snyder, 341 Pa. 465, 19 A.2d 82 (1941).
32. PA. STAT. § 301.5(b) (1950).

defeasible fee in the church immediately became absolute and the church could benefit from the sale of the land. This is a very practical problem and in no sense academic, as more and more older churches in urban areas become surrounded by industrial and commercial uses. School consolidation also presents the same problem, as to the schools being abandoned. Problems concerning defeasible fees are arising with increasing frequency.

It is time to turn to the tale of the second case, although this is more of a rule that arose from Massachusetts rather than the case itself. *Rice v. Boston & Worcester R.R.*[33] at least started the trouble by holding that the right of entry following a fee on condition subsequent was inalienable. Later cases found the possibility of reverter following a determinable fee was alienable,[34] thus creating a rule in Massachusetts that the possibility of reverter could be alienated but not the right of entry. This is the tale of the second case (or cases) to be considered.

The *Rice* case also perpetuated an error made by the Maine court in *Hooper v. Cummings.*[35] By a misconstruction of Viner's *Abridgment,*[36] it had been held that an attempt to alienate a right of entry would destroy it. Fortunately, only a few jurisdictions followed this error. An annotator has disposed of this rule as follows:

> It is not difficult to imagine that a layman, browsing in the green and fertile pastures of the law reports . . . might wonder by what legerdermain a right, created by solemn compact between grantor and grantee, had been made to vanish into thin air. It would puzzle him to understand how an unsuccessful attempt to convey can have the effect of destroying the thing that is not conveyed. "How is it," he would say, "that what does not pass does not remain?"[37]

However, one writer has stated that this "is still the rule followed by the overwhelming weight of authority."[38] The *Restatement of the Law of Property* labeled the right of entry a "power of termination" and stated that it would be destroyed by an attempted alienation, but this was too much even for the *Restatement*, so this view was reversed.[39] It is not intended to pursue this point in the present

33. 94 Mass. (12 Allen) 141 (1866).

34. Brown v. Independent Baptist Church, 325 Mass. 645, 91 N.E.2d 922 (1950); Dyer v. Siano, 298 Mass. 537, 11 N.E.2d 451 (1937).

35. 45 Me. 359 (1858).

36. 5 VINER'S ABRIDGMENT, *Condition* (I.d. 15) *306.

37. Annot., 1916F L.R.A. 311. See also dissent of Potter, J., in Dolby v. Dillman, 283 Mich. 609, 278 N.W. 694 (1938).

38. Roberts, *Assignability of Possibilities of Reverter and Rights of Re-Entry,* 22 B.U.L. REV. 43, 47 (1942).

39. RESTATEMENT, PROPERTY § 160, comment *c* (1936). The position of the 1936 *Restatement* was reversed in 1948. RESTATEMENT, PROPERTY § 160, comment *c* (Supp. 1948).

discussion. Sufficient warning of this trap appears in the secondary authorities so that it is unlikely that any court today would be caught.

The *Rice* case helped lay a trap that is ready to catch the unwary. It largely created a rule that the possibility of reverter was alienable and the right of entry was not alienable. It stated the American fiction that neither interest was assignable at common law, but this generally accepted rule was based on a complete absence of English authority. It is a difficult rule to apply because of the problem of telling one of the two interests from the other. They can only be defined by saying that the possibility of reverter is the interest retained by an owner of land in fee simple who has created a determinable fee in another, and that the right of entry is the interest retained when a fee on condition subsequent is created in another. These two kinds of defeasible fees are difficult to distinguish when they are met in the middle of the road and this distinction has caused confusion in the cases. However, we find that this "Massachusetts rule" is with us today and states that the possibility of reverter is alienable but the right of entry (or power of termination) is not alienable. It is submitted that until 1961 this was the rule only in Massachusetts and in no other jurisdiction.

The local law of Massachusetts has been taught and considered as the "weight of authority" by one law school in that state and its disciples so long that most writers of secondary authorities today meekly acquiesce and follow along. It is often stated that there is no good reason why there should be any distinction between the right of entry and the possibility of reverter as to alienability, but that the "weight of authority" creates such a distinction.[40] The encyclopedias and annotators follow along, but hedge a little by adding "in the absence of statute."[41] It is difficult to see how law schools today continue to operate the case method "in the absence of statute." Judges and lawyers look at the statutes first of all. Statutes today are a major part of the law. What, then, is the real situation as to the alienability of these interests today "in the presence of statutes?"

It is naturally true that in a number of states the change in alienability would affect only instruments effective after the date of the statute. Michigan is a typical example, with its 1931 statute.[42] A look at the present status of the states reveals a somewhat

40. 1 AMERICAN LAW OF PROPERTY §§ 4.6, 4.68, 4.7 (1952); RESTATEMENT, *op. cit. supra* note 39, §§ 159, 160; SIMES & SMITH, *op. cit. supra* note 16, §§ 1860, 1862.

41. 19 AM. JUR. *Estates* § 83 (1939); 33 AM. JUR. *Life Estates Remainders* §§ 206, 209 (1941); 6 C.J.S. *Assignments* § 13 (1936); 26 C.J.S. *Deeds* § 148 (1956); 31 C.J.S. *Estates* §§ 10, 20, 105b (1964); Annot., 53 A.L.R.2d 224 (1957).

42. Schoolcraft Community School Dist. v. Burson, 357 Mich. 682, 99 N.W.2d 353 (1959).

different weight of authority. Georgia and Ohio will be reserved for later consideration. Fourteen states have held both the right of entry and the possibility of reverter to be freely alienable. They are Connecticut, Iowa, Kansas, Kentucky, Michigan, Minnesota, Montana, New Jersey, New Mexico, Oklahoma, Pennsylvania, Rhode Island, Texas, and Virginia.[43] In some of these states alienability was created by statute which changed a former rule of decision of inalienability. In another six states, one of the interests has been held alienable, with sufficient dicta to probably include the other interest. They are Arkansas, California, Florida, Idaho, Mississippi, and Vermont.[44] In ten states, both interests are considered to be inalienable. They are Illinois, Indiana, Maine, New York, North Carolina, North Dakota, Oregon, South Carolina, South Dakota, and Tennessee.[45] In three other states, one of the interests has been held inalienable, with

43. (In this footnote and the following two footnotes cases and statutes are arranged together by jurisdiction for the convenience of the reader.) CONN. GEN. STAT. § 47-29 (1958); Fitch v. State, 139 Conn. 456, 95 A.2d 255 (1953); Richard v. Chicago, B. & O.R.R., 231 Iowa 563, 1 N.W.2d 721 (1942); Jacobs v. Miller, 253 Iowa 213, 111 N.W.2d 673 (1961); KAN. GEN. STAT. § 67-205 (1949); Shell Petroleum Corp. v. Hollow, 70 F.2d 811 (10th Cir. 1934), *cert. denied*, 293 U.S. 573 (1934); Austin v. Calvert, 262 S.W.2d 825 (Ky. App. 1953); MICH. COMP. LAWS, § 554.111 (1948); Schoolcraft Community School Dist. v. Burson, *supra* note 42; MINN. STAT. § 500.16 (1957); State v. Independent School Dist. No. 31, 123 N.W.2d 121 (Minn. 1963); Waddell v. School Dist., 79 Mont. 432, 257 Pac. 278 (1927); N.J. REV. STAT. § 46:3-7 (1937); Guyer v. YMCA 142 N.J.E.Q. 400, 60 A.2d 276 (Ch. 1948); N.M. STAT. §§ 70-1-3, 1-21 (1953); Prince v. Charles Ilfeld Co., 72 N.M. 351, 383 P.2d 827 (1963); Fuhr v. Oklahoma City, 194 Okla. 482, 153 P.2d 115 (1944); Calhoun v. Hays, 155 Pa. Super. 519, 39 A.2d 307 (1944); London v. Kingsley, 368 Pa. 109, 81 A.2d 870 (1951); R.I. GEN. LAWS § 34-4-11 (1956); Perry v. Smith, 198 S.W. 1013 (Tex. Civ. App. 1917), *rev'd*, 231 S.W. 340 (Tex. Comm. App. 1921); James v. Dalhart Consol. Independent School Dist., 254 S.W.2d 826 (Tex. Civ. App. 1952); Copenhaver v. Pendleton, 155 Va. 463, 155 S.E. 802 (1930); County School Bd. v. Dowell, 190 Va. 676, 58 S.E.2d 38 (1950); Sanford v. Sims, 191 Va. 644, 66 S.E.2d 495 (1951).

44. Moore v. Sharpe, 91 Ark. 407, 121 S.W. 341 (1909); CAL. CIV. CODE § 699; Los Angeles & Arizona Land Co. v. Marr, 187 Cal. 126, 200 Pac. 1051 (1921); Shields v. Bank of America, 37 Cal. Rptr. 360 (Cal. App. 1964); Richardson v. Holman, 160 Fla. 65, 33 So. 2d 641 (1948); IDAHO CODE §§ 55-109, 502 (1957); Ricks v. Merchants Nat'l Bank, 191 Miss. 323, 2 So. 2d 344 (1941); Collette v. Town of Charlotte, 114 Vt. 357, 45 A.2d 203 (1946); Dickerman v. Town of Pittsford, 116 Vt. 563, 80 A.2d 529 (1951).

45. ILL. ANN. STAT. ch. 30, § 37b (Smith-Hurd 1963); Village of Peoria Heights v. Keithley, 299 Ill. 427, 132 N.E. 532 (1921); Federal Land Bank v. Luckenbill, 213 Ind. 616, 13 N.E.2d 531 (1938) (*semble*); Hooper v. Cummings, 45 Me. 359 (1858); Pond v. Douglas, 106 Me. 85, 75 Atl. 320 (1909); Nicoll v. N.Y. & Erie R.R., 12 N.Y. 121 (1854; Elmore v. Austin, 232 N.C. 13, 59 S.E.2d 205 (1950); N.D. CENT. CODE § 47-09-02 (1960); Wagner v. Wallowa County, 76 Ore. 453, 148 Pac. 1140 (1915); Magness v. Kerr, 121 Ore. 373, 254 Pac. 1012 (1927); First Presbyterian Church v. Elliott, 65 S.C. 251, 43 S.E. 674 (1903); Purvis v. McElveen, 234 S.C. 94, 106 S.E.2d 913 (1959); S.D. CODE § 51.1301 (1939); Rowbotham v. Jackson, 68 S.D. 566, 5 N.W.2d 36 (1942); Yarbrough v. Yarbrough, 151 Tenn. 221, 269 S.W. 36 (1925); Humphreys County Bd. of Educ. v. Baker, 124 Tenn. 39, 134 S.W. 863 (1911).

sufficient dicta probably to include the other interest. They are Alabama, Colorado, and Delaware.[46]

Ohio followed the Massachusetts rule of a distinction between the alienability of the two interests.[47] However, a 1953 statute made both interests alienable,[48] so that left Massachusetts standing alone. Thus in 1961 we find Massachusetts as the only jurisdiction making any distinction as to the alienability of the right of entry and the possibility of reverter, but the secondary authorities cited this rule as the "weight of authority." The trap was ready. It caught a victim. The Georgia court fell completely in. May this be a lesson to others.

In *Franks v. Sparks*,[49] the Georgia court held that a right of entry was not alienable. The court on this point relied entirely on two encyclopedias and one treatise that had stated the rule from Massachusetts, with no real consideration of the problem involved and no consideration of the cases.[50] Chief Justice Duckworth dissented and stated that the interest was alienable, but did not discuss the point at length. The court cited *Evans v. Brown*[51] as to the nature of the defeasible fee, but not on the question of alienability. The *Evans* case had clearly held that a right of entry after breach of the condition subsequent was alienable and stated that the effect of a conveyance before breach was not then for consideration under the facts of that case. Under the Georgia rule, the *Evans* case being a full bench decision was controlling on the court. In a number of other cases, the Georgia court had held the possibility of reverter to be alienable and the dicta was strong enough to have included the right of entry.[52] In falling into the trap in the *Franks* case, the Georgia court simply accepted the encyclopaedic statements based on the Massachusetts rule without a real understanding or consideration of the problem.

Thus, in this area the score stands twenty-one in favor of the alienability of both interests and thirteen opposed to alienability, with Massachusetts and Georgia finding the possibility of reverter to

46. Davis v. Memphis & Charleston R.R., 87 Ala. 633, 6 So. 140 (1889); Union Colony Co. v. Gallie, 104 Colo. 46, 88 P.2d 120 (1939); Cookman v. Silliman, 22 Del. Ch. 303, 2 A.2d 166 (1938).

47. Reiter v. Pennsylvania Co., 29 Ohio Dec. 125 (1917); Joseph Schonthal Co. v. Village of Sylvania, 60 Ohio App. 407, 21 N.E.2d 1008 (1938).

48. OHIO REV. CODE § 2131.04 (1953); PCK Properties Inc. v. City of Cuyahoga Falls, 112 Ohio App. 492, 176 N.E.2d 441 (1960) (dictum).

49. 217 Ga. 117, 121 S.E.2d 27 (1961).

50. 19 AM. JUR. *op. cit. supra* note 41, at 546; 33 AM. JUR. *op. cit. supra* note 41, at 690; 31 C.J.S. *Estates* § 20, at 32 (1964); 26 C.J.S. *op. cit. supra* note 41, at 1052-54; 4 THOMPSON, REAL PROPERTY 687 (1961).

51. 196 Ga. 634, 27 S.E.2d 300 (1943).

52. *E.g.*, Williams v. Thomas County, 208 Ga. 103, 65 S.E.2d 412 (1951); Joel v. Joel, 201 Ga. 520, 40 S.E.2d 541 (1946); Shockley v. Storey, 185 Ga. 790, 196 S.E. 702 (1938); Kennedy v. Kennedy, 183 Ga. 432, 188 S.E. 722 (1936); Wilcoxon v. Harrison, 32 Ga. 480 (1852).

be alienable and the right of entry inalienable. To steal from Professor Leach, "Hail, Massachusetts!"[53]—but please not as the "weight of authority." It is hoped that in due time Georgia will correct this error and once again leave Massachusetts standing alone. The fact that free alienability of both interests is desirable seems obvious and need not be belabored.

Now for the moral of this tale, if it has a moral. The things that you read in the encyclopedias and treatises, they "ain't necessarily so." Future Interests should not be for the few, either lawyers or judges. Many present leaders at the bar completed their legal education at a time when few law schools taught a course in Future Interests. Continuing legal education programs might well include some fundamentals of Future Interests ahead of their Estate Planning courses. A little knowledge in this area is truly a dangerous thing and has produced some weird decisions.

53. Leach, *Perpetuities Legislation: Hail, Pennsylvania!* 108 U. PA. L. REV. 1124 (1960).