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Property: Possibility of Reverter Extinguished by Dissolution of Grantor Corporation

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of a possible indeterminate production of oil.[44] But let it be assumed that the production of oil is not indeterminate. Then upon failure of production of oil the lease may be rescinded at the option of the lessor,[45] regardless of other limitations in the granting instrument. This presupposes that the interest of the lessee would be "temporary possession and use of the property,"[46] sufficient to bring it under the California definition of hiring. But because of the number of unquestioned California cases relying on the tacit assumption of possible indefinite production of oil,[47] the suggested view would seem to be without application.

On the basis of the foregoing analysis it is submitted that a grant "for 20 years and so long thereafter as lessee shall conduct drilling" vests in the lessee a *profit a prendre* for 20 years immediately, and upon termination of the 20-year period, if the lessee has commenced drilling, there vests in him a determinable fee in a *profit a prendre.*

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PROPERTY: POSSIBILITY OF REVERTER EXTINGUISHED BY DISSOLUTION OF GRANTOR CORPORATION.—In *Addy* v. *Short*[1] a Delaware corporation conveyed land in Delaware to the United States for a Coast Guard rescue station with the provision that should the land cease to be used for such purposes it would revert "to the party of the first part or its assigns." The grantor corporation voluntarily dissolved. Later the United States abandoned the premises. Thereupon defendants, a Delaware corporation, entered and remained in possession. This action for ejectment was brought by trustees appointed by the Chancellor under Delaware statute to administrate property of the dissolved corporation for the benefit of creditors and stockholders.[2] They based their action on the theory that the United States' estate determined by its own limitation, entitling them as holders of the possibility of reverter to possession. Plaintiffs contended that the possibility of reverter constituted a corporate asset. It was held that the possibility of reverter was not an estate and was not such a property right as would constitute a corporate asset; there was no successor to the corporation; the possibility of reverter could not be in abeyance and was extinguished upon the dissolution of the corporation.

The interests created by the conveyance were a determinable fee in the United States and a possibility of reverter in the grantor corporation. A determinable fee is an estate which may continue forever, but which is determined by the occurrence of a stated event.[3] A possibility of reverter is the interest left in the grantor after

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[44]Stevens County v. Mid-Kansas Oil & Gas Co., 113 Tex. 160, 254 S. W. 290, 29 A. L. R. 566 (1923).

[45]*Supra,* notes 30 and 32.

[46]Cal. Civ. Code, sec. 1925.

[47]*Supra,* note 18.

[1]81 A. 2d 300 (Del., 1951).

[2]Del. Corp. Act, chap. 65, Rev. Code of Del. (1935), sec. 43: "When any corporation organized under this Chapter shall be dissolved in any manner whatever, the Court of Chancery, on application of any creditor or stockholder of such corporation, *at any time,* may appoint trustees to . . . collect *properties due* and belonging to the corporation, with power to prosecute and defend in the name of the corporation . . . and to do all such other acts which might be done if the corporation were in being . . . and the powers of such trustees may be continued as the Chancellor shall think necessary for the aforesaid purposes."

[3]RESTATEMENT, PROPERTY, § 44(a) (1936).

conveying a determinable fee and becomes possessory automatically on the happening of the determining event.[4]

Apparently, there are no other American decisions or statutes governing the question of whether or not a possibility of reverter is a corporate asset. The court's decision rests on the fact that the grantor corporation had dissolved and on the following propositions:

1. The rule that a possibility of reverter is not transferable and may only descend to the heirs of the grantor; and

2. The trustees were not the successors of the corporation, and

3. Since the possibility of reverter cannot be transferred to trustees for distribution to the stockholders, it must be extinguished.

The court gave no effect to the obvious intent of the statute. Had the interest involved been an undistributed parcel of land which the corporation had held in fee simple, would this court hold that because the corporation was dissolved its right to the property was extinguished? Obviously not. The intent of the statute was to give to dissolved corporations the right to bring an action in the corporate name, at any time after dissolution, to collect properties due and belonging to the corporation. The possibility of reverter was an undistributed property right. The statute was expressly designed to allow a dissolved corporation to collect such property rights.

As authority for its decision the court applied the rule that "a bare possibility of reverter is not an estate, is not alienable or assignable, and not devisable in the absence of statute.[5] In that case the possibility of reverter was held by joint tenants who conveyed a determinable fee to a school. The possibility of reverter was not transferred nor was there any attempt to transfer it. The issue of whether or not the possibility of reverter was an assignable interest was never before the court and the rule this court attempts to apply as law in the instant case, was in the *Cookman* case a mere dictum. Nowhere in the authorities cited for the *Cookman* dictum is there a holding that it is the law in Delaware that a possibility of reverter is not assignable.

The rule against assignability had its origin in England, where the assignment of any chose in action, entry, or re-entry was against the common law which forbade maintenance.[6] Maitland suggests that the reason for the rule relates to the time of livery of seisen and the concept that there could be no transfer of a *right* to a *thing* if you were not at once *possessed* of that thing.[7] *Simes,* in his "Law of Future Interests," says there is today no good reason why the possibility of reverter should not be alienable.[8] "The tendency of court decisions seems to allow a greater freedom of alienation as we get farther away from those conditions of society in England which gave birth to statutes restricting alienation to prevent maintenance. Holdings that the possibility of reverter after a determinable fee is assignable are in keeping with this more liberal tendency of the courts in matters of alienation.[9]

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[4]RESTATEMENT, PROPERTY, § 44(b) (1936).

[5]Cookman v. Silliman, 22 Del. Ch. 303, 2 A. 2d 166 (1938).

[6]COKE ON LITTLETON, 214a.

[7]MAITLAND COLL. PAPERS, I, 372.

[8]3 SIMES' LAW OF FUTURE INTERESTS, sec. 715 (1936).

[9]Caruthers v. Leonard, 254 S. W. 779, 782, Tex. Com. App. (1923). Accord, Scheetz v. Fitzwater, 5 Pa. 126 (1949); Reichard v. Chicago B. & Q. R.R. Co., 1 N. W. 2d 721, 231 Iowa 563 (1942); Slegal v. Lauer, 148 Pa. 236, 23 A. 996 (1892); Green's Admr. v. Irvine, 66 S. W. 278, 23 K. L. R. 1762 (1902); Fall Creek School v. Shuman, 55 Ind. App. 232, 103 N. E. 677 (1913).