THE NATURAL TERMINATION OF ESTATES.

I. Direct Limitations—Regular Termination Upon the Happening of One Event.

Estates in land and chattels real may be determined upon the happening of one event. Such interests are those which continue to the utmost period to which they are extended by the limitation or gift. They have been called "absolute" estates, because they are unaffected by any collateral limitations or any express conditions.[1]

Of the four chief categories of estates from the standpoint of quantity of interest—the fee simple, fee tail, life estate and chattel real—only one, the fee simple, is not in contemplation of law assumed to await a natural expiration. It is regarded as an infinite interest. In Littleton's words, "Tenant in fee simple is he which hath lands in fee simple to hold to himself and his heirs forever." [2] It is true that the fee simple is subject to escheat on death of the tenant intestate without heirs. But as was said in the leading case of *Pells* v. *Brown*, "the law doth not expect the determination of a fee by his [the tenant's] dying without heirs."[3] It was because the fee simple was conceived of as an infinite interest that the common law courts refused to countenance the idea that any interest could be mounted upon a fee.[4] Once a fee was given, the feoffor had

[1] Preston: 1 Estates, 125. But as a general rule the term "absolute" is applied only to unmodified fees.

[2] Littleton: Tenures, Secs. 1, 11. See also Blackstone: II Comm. 104; Tiffany: Real Prop., 43; Digby: Hist. of Law of Real Prop. (5th Ed.), 60; "Proprietary rights in land are, we may say, projected upon the plane of time. The category of quantity of duration is applied to them. The life tenant's rights are a finite quantity; the fee tenant's rights are an infinite or potentially infinite quantity; we see a difference in respect of duration and this is the one fundamental difference." Poll & Mait.: 2 Hist. Eng. Law (2d Ed.), 10.

[3] Cro. Jac. 509. "The law does not presume failure of heirs and it therefore presumes that a fee simple will in fact endure forever. In this respect the quantum of a fee simple is greater than the quantum of all modified fees, which, though they may endure forever, are not presumed by the law to do so." Challis: Real Prop. (3d. Ed.), 220.

[4] Pells v. Brown, Cro. Jac. 590: Williams, J., in Egerton v. Massey, 3 C. B., N. S., 338; Blanchard v. Blanchard, 1 Allen 223; Loddington v. Kline, 1 Salk. 224.

nothing more to give; the law would not contemplate the occurrence of a contingency upon which he might have more to give.

The fee tail is sharply distinguished from the fee simple in this respect. It is a fee "cut down" [5] to a wholly finite interest; an estate whose contemplated natural expiration is the very law of its being. The Statute *De Donis*,[6] by force of which the fee tail arose, was directed primarily not to the creation but to the determination of such estates. It sought to secure—and for about two hundred years was successful in securing—that whenever an estate was conveyed to a man and the heirs of his body the estate should cease only when the heirs of his body became extinct. So long as the fee tail remains a fee tail it is subject, when recognized today, to termination in this way. Such termination, by the extinction of the issue, is as clearly termination by natural expiration as is termination of a life estate by death of the life tenant.[7] The life or duration of the fee tail is, so to speak, the life or duration of that stock of descent, general or limited, to which it is given.[8] When that expires the estate *ipso facto* comes to an end as an estate tail.[9] If anything remains or flows out of it it is only a life estate of a special character known as a tenancy in tail after possibility of issue extinct.[10]

An estate for life, in the ordinary sense, as it is an estate which is measured by the life or lives of one or more persons,[11]

[5] See Leake: Property in Land (2d Ed.), 26.

[6] "And note that this word (*talliare*) is the same as to set to some certainty, . . . what issue shall inherit by force of such gifts, and how long the inheritance shall endure." Littleton: Tenures, Sec. 18.

[7] A fee tail is a particular estate. A remainder may be limited upon it; and there is a reversion in the donor. Co.: Lit. 22a, 22b; Challis: Real Prop. (3d Ed.), 298. Digby: Hist. Real Prop. (5th Ed.), 224, 225. In this respect the fee tail differs from the fee simple absolute and all modified fees, which can never be regarded in any proper sense as particular estates.

[8] Littleton: Tenures, 18; Digby: Hist. Real Prop. (5th Ed.), 250.

[9] Williams: Real Property (22d Ed.), 90.

[10] See Littleton: Tenures, Secs. 32, 33. A tenant in tail after possibility of issue extinct could not suffer a common recovery, moreover, he cannot at the present day make any disposition under the English Fines and Recoveries Act. Challis: Real Prop. (3d Ed.), 314. The estate is distinguishable from the ordinary life estate in that the tenant can commit waste. Littleton: Tenures, Sec. 34.

[11] Thus Challis: Real Property (3d Ed.), 338, divides estates for life

affords almost the readiest illustration of the estate whose determination is by natural expiration. Lives in being have frequently been compared to burning candles. They must all burn out in time. So when the life or lives that measure the duration of a given estate have burned out the estate is naturally at an end.

If the legal analysis of estates were to be changed some might be found to say that whenever a life estate is not for the life of the tenant himself but is *pur autre vie,* or for joint lives, or for the life of the longest liver of several persons, it might well be spoken of as a life estate subject to collateral limitation or at least to determination by collateral lives.[12] But the practice of treating the terms "tenant for life" or "life tenant" as including both a tenant for the term of his own life and the tenant for the term of another's life is too deeply rooted to make this at all desirable.[13] Littleton treated the two interests as co-ordinate and of the same general character. "Tenant for term of life, is where a man letteth lands and tenements to another for term of the life of the lessee, or for term of the life of another man. In this case the lessee is tenant for term of life." [14] and this treatment has been the practice of writers on the law of real property ever since.[15]

into, "(1) An estate for the life of the tenant himself; (2) An estate for the life of another person, or *pur autre vie;* (3) An estate for the joint lives of several persons; and (4) An estate for the life of the longest liver of several persons."

[12] The fact that an estate *pur autre vie* usually arises from assignment of an estate for tenant's own life, in other words, is an estate for life transferred would, alone, make the orthodox treatment of that interest natural. But such an estate may also be created *de novo.* Moreover, whether created by assignment or *de novo,* it is subject to incidents which distinguish it from the estate for tenant's own life. It was not regarded in early times as a freehold. See Williams: Real Prop. (22d Ed.), 132.

[13] Moreover, it would involve some special difficulties of its own. For example, when an estate was measured by the lives of the tenant himself and of another person or persons and the tenant survived the other lives, it would be an estate for life simply, but if the tenant died first it would resemble, and for the residue of the term become, an estate *pur autre vie.* Co.: Lit. 416; Leake: Prop. in Land (2d Ed.), 144.

[14] Littleton: Tenures, Sec. 56.

[15] Co.: Lit. 41b. Blackstone: II Comm. 120; Leake: Prop. in Land (2d Ed.), 144. Washburn: Real Prop., Secs. 220, 221; Tiffany: Real Prop., 70. But see Challis: Real Prop. (3d Ed.), 339, 357; he gives distinct chapters

The manner of termination of an estate for the life of another is paralleled by the manner of termination of the "base fee"—using that term in this place not as synonymous with determinable fee or fee on collateral limitation,[16] but in the restricted sense in which it is employed by such English writers as Challis and Leake.[17] A base fee so considered is in effect a fee tail transferred in such manner as not to bar the remainder or reversion but to give to the transferee an estate so long as the original donee shall have heirs of his body.[18] The estate *pur autre vie* naturally terminates or expires when the person by whose life time it is measured dies. So here, the base fee naturally terminates when the line of issue by which it is measured becomes extinct.[19]

Finally chattels real, when unqualified and subject to no condition, may be said to have a natural termination. As to its continuance, says Preston, a chattel real is to be considered an

to consideration of estates for the life of the tenant, and estates *pur autre vie*.

[16] It is generally used in this way in this country. 17 Harv. L. Rev., 296; Mass. Land Court Decisions, p. 210; Tiffany: Real Prop., p. 192. For such usage there is authority no less respectable than Lord Coke himself. 10 Co. 97b; Co.: Lit. 1b; Challis: Real Prop. (3d Ed.), 62, 63, and see Digby: Hist. Law Real Prop. (5th Ed.), 224.

[17] The base fee in this restricted sense of the term cannot be created by original grant, or "mere limitation." Challis: Real Prop. (3d Ed.), 325. Leake: Prop. in Land (2d Ed.), 231, observes that a base fee may coexist with a reversion or remainder by "matter *ex post facto*," though it cannot be thus limited by an original grant. But a determinable fee, to A and his heirs so long as B has heirs of his body, can be created by mere limitation. See the discussions appended in Seymour's Case, 10 Co. 95b; Challis: Real Prop. (3d Ed.), 330.

[18] Challis, who has contributed much to our knowledge of the base fee, describes it as follows in his Real Property (3d Ed.), 325: "The earliest (not to say the only) attempt to define the term *base fee* with which the present writer is acquainted is that given by Plowden; and his definition is substantially as follows: A base fee is a fee descendible to the heirs general upon which subsists a remainder or reversion in fee simple. The conditions laid down by this definition can only be fulfilled by conversion of a fee tail into a fee descendible to the heirs general, by some method which does not destroy the remainder or reversion previously subsisting upon the fee tail. For no fee descendible to the heirs general which arises by mere limitation, can have subsisting upon it any remainder or reversion." See also Leake: Prop. in Land (2d Ed.), 28, 231, and note how the "Fines and Recoveries Act" has further limited the force of the term.

[19] Leake: Prop. in Land (2d Ed.), 28 Seymour's Case, 10 Co. 95b.

absolute estate. It is an estate "which in point of limitation will certainly continue to the end of that period" for which it was given.[20] The end is certainly known, this being the prime characteristic which distinguishes estates for years from other interests. "For regularly in every lease for years the term must have a certain beginning and a certain end." [21]

II. Collateral Limitations—Regular Termination Upon the Happening of Either of Two Events.

The determination of estates whose *quantum* is designated by what is usually termed a "collateral limitation," a "special limitation" or more briefly—though at the expense of clearness—a "limitation" requires separate consideration.[22] But it may be emphasized at the outset that the termination of such estates is on all fours with the termination of the estates previously considered. It is termination by natural expiration. Any other conception of the determination of such estates is irreconcilable with certain of the most fundamental rules of the common law, particularly with the rule that no future interest can be limited in derogation of a prior estate.

What makes desirable, if not necessary, this separate consideration is the fact that such estates may naturally determine upon the happening of more than one event.[23] A life estate for the tenant's own life determines with the death of the tenant.

[20] Preston: I Estates, 126.

[21] Bishop of Bath's Case, 6 Co. 34b. Duration, however, may be limited by reference, as well as expressly. The case continues: "Yet if by reference to a certainty it may be made certain it sufficeth. For example, if A leaseth his land to B for so many years as B hath in the manor of *Dale* and B hath then a term in the manor of *Dale* for ten years, this is a good lease by A to B of the land of A for ten years."

[22] Littleton used none of these terms, but instead the term "condition in law." Tenures, Sec. 380. Coke entirely opposed this usage. In discussing this section of Littleton, he says: "Here Littleton termeth words of limitation to be conditions in law: for his first example is, '*During the coverture between them.*' This word (*durante*) is properly a word of limitation, as *durante viduitate*. . . . And properly a condition in law is, as hath been said, where the law createth the same without any expresse words." Co.: Lit. 234b.

[23] Indeed it appears that they may be so limited as to determine upon the happening of any one of several events. Preston: I Estates, 26.

An estate *pur autre vie* determines with the death of *cestui que vie*. A fee tail and a base fee determine upon the extinction of issue. In all of these cases the event is single. A determinable life estate on the other hand—for example an estate to A so long as she remains the widow of B—determines upon either the death or remarriage of A. And so with a determinable fee tail, a determinable base fee,[24] or a determinable estate for years. The determinable fee simple is in a case by itself. The duality of the events affecting this estate is not that of determination on direct or collateral limitation. For the law will never expect its determination *by failure of heirs,* any more than it will expect the determination of a fee simple absolute on such an event.[25] In that respect it is a potentially infinite interest. A conveyance of a determinable fee "exhausts the fee" as completely as does a conveyance of a fee simple absolute. But the law may contemplate its determination by the happening of the collateral contingency though it insists that the contingency must be one that may never happen.[26] The determinable fee, then, is one which will determine on the happening of a collateral

[24] A determinable fee tail so transferred as to bar the rights of the issue in tail only, leaving unaffected the rights of persons entitled in reversion or remainder, might be called a determinable base fee, or a base fee with a proviso for cesser. *Cf.* Leake: Prop. in Land (2d Ed.), 164, and his examples of provisos for cesser.

[25] The words in Pells v. Brown, Cro. Jac. 590, that "one fee cannot be in remainder after another; for the law doth not expect the determination of a fee by his dying without heirs, and therefore cannot appoint a remainder to be given upon determination thereof," necessarily include all modified fees. It is believed that no authority will be found to say that the law will expect a failure of heirs in case of any modified fee, either determinable or on condition. Co.: Lit. 18a, says of Littleton's statement, "that a man cannot have a more large or greater estate than fee simple." (Litt., Sec. 18), "This doth extend as well to fee simples conditional and qualified, as to fee simples pure and absolute. For our author speaketh here of the ampleness and greatness of the estate, and not of the perdurableness of the same. And he, that hath a fee simple conditional or qualified, hath as ample and great an estate, as he that hath a fee simple absolute; so as the diversity appeareth between the quantity and quality of the estate."

[26] Challis: Real Prop. (3d Ed.), 220. "It is a quality of this estate, while it falls under this denomination, that it is liable to be determined by some act or event expressed in its limitation, to circumscribe its continuance, or inferred by the law as bounding its extent." Preston: I Estates, 431; Gillespie v. Broas, 23 Barb. 370, 376; Shaw v. Hoard, 18 O. St. 221.

event; or become a fee simple absolute if the event is one which admits of becoming and becomes impossible.[27]

The books and cases are substantially one in treating the ending of determinable estates as natural but they do not always clearly express themselves to this effect. Not infrequently it is said that these estates are defeated by the happening of the contingency,[28] as though the contingency were something exterior, coming in to cut off the estate before it had run its natural course. But after all this seems merely a manner of speech.[29]

Preston makes a clear, and for certain purposes, a very useful distinction between direct limitations, for example the limitations of ordinary life estates, and collateral limitations,[30] but he points out that "the collateral limitation [just like the direct limitation] marks the bounds or compass of the estate and the time of its continuance." Here he is showing how a limitation differs from a condition. Having shown that a limitation—and a collateral limitation at that—marks the boundary of an estate, he goes on to say: "The condition [on the other hand] has its operation in defeating the estate before it attains the boundary." [31] And so in the more modern books, as in

[27] Challis divides determinable fees into two classes according as they are liable to determine on (1) a contingency which admits of becoming impossible to happen, such as the marriage of A, which may become impossible by A's death, or (2) a contingency, which if it does not happen, must forever remain liable to happen; such as the fall of a particular building. Challis: Real Prop. (3d Ed.), 254.

[28] Preston: I Estates, 431 (but cf. p. 42); Warner v. Tanner, 38 O. St. 118; Morris Canal and Banking Co. v. Brown, 27 N. J. L. 13.

[29] In view of the fact that words of condition have often been treated as creating a mere limitation (see Leake: Prop. in Land [2d Ed.], 168; Tiffany: Real Prop., 191), this manner of speech is not surprising. This situation affords a certain justification for the term "conditional limitation" as applied to collateral limitations by Sanders, Leake and others.

[30] See Preston: I Estates, 43, as amplified in Challis: Real Prop. (3d Ed.), 252: "A *direct* limitation marks the duration of estates by the life of a person, by the continuance of heirs, by a space of precise and measured time; making the death of the person in the first example, the continuance of heirs in the second example, and the length of the given space in the third example, the boundary of the estate or the period of duration. A *collateral* limitation, at the same time that it gives an interest which may (by possibility) have continuance for one of the times (marked out) in a direct limitation, may, on (the happening of) some event which it describes, put an end to the right of enjoyment during the continuance of that time."

[31] Preston: I Estates, 49.

Tiffany's, "The Modern Law of Real Property." Words of condition "are considered to provide for the cutting off of the estate before its regular termination." Whereas "in the case of an estate on special [he employs this word rather than "collateral"] limitation, the words of contingency are regarded as part of the limitation itself, and so as not cutting off an estate previously limited, but merely marking the *quantum* of the estate." [32] This is as much as to say that an estate which comes to an end upon the occurrence of a contingency named in the collateral limitation ends regularly, because its sands have run. "The only practical distinction between a right of entry for a breach of condition subsequent and a possibility of reverter upon a determinable fee," says the Supreme Court of New Hampshire, "is that in the former the estate in fee does not terminate until entry by the person having the right while in the latter the estate reverts at once upon the occurrence of the event by which it is limited." [33] This is like Blackstone's language where, speaking of a determinable life estate, he says that "whenever the contingency happens" the estate is "absolutely determined and done." [34] Judge Davis, of the Massachusetts Land Court, speaking of the determinable fee follows a common practice in using the words "when it has reached its

[32] Tiffany: Real Prop., 189. "The object of such a limitation is not to impose a penalty, but to mark the extent of the interest given; against the terms of which, equity has not power to relieve"—said of an estate limited to the testator's widow so long as she remained such, in Bennett v. Robinson, 10 Watts (Pa.), 348, 351.

[33] Lyford v. Laconia (1908), 75 N. H. 220, 225; Fuller v. Wilbur, 170 Mass. 506; *Re* Carnes Settled Estates (1899), 1 Ch. 324, 329; *Re* Hope Johnstone (1904), 1 Ch. 420; Dickson's Trust, 1 Sim., N. S., 37, 43, 46; Doe v. Yates, 5 B. & Ald. 544. In the two preceding, as in many other cases, the contingency is spoken of as a proviso or condition subsequent, defeating the estate. But very often words of apparent condition create only limitations. See Leake's treatment of these cases, Prop. in Land (2d Ed.), 164. See the discussion by Hosmer, J., in Wheeler v. Walker, 2 Conn. 196, 200. "The proviso is, in its ordinary construction, one of cesser and determination only." Scarborough v. Doe, 3 A. & E. 897, 965: "It has been said that the distinction between words of limitation and words of condition lies in the terms used; but it is, perhaps, more correct to say that it depends rather upon the intention and effect than upon the exact letter of the words." Leake op. cit. 168; Shep. Touch., by Preston, 121, 122. Owen v. Field, 102 Mass. 90, 105.

[34] Bl.: II Comm., 121.

natural end."[35] A collateral limitation, quite like a direct limitation, "marks the period which determines the estate," says the Massachusetts Supreme Court in *Church in Brattle Sq.* v. *Grant.*[36] Or as Professor Gray with others puts it, such an estate expires by the terms of its original limitation.[37] The thought is similarly expressed by Leake when he says that such a limitation "operates to determine the estate by the intrinsic force of the limitation; in the event prescribed by the terms of the condition [substitute "limitation"] the estate ceases."[38]

It is the common practice to treat determinable life estates and determinable estates tail as subordinate or modified categories of life estates proper or estates tail proper.[39] This has advantages—but it has the defects of those advantages. In most respects determinable life estates are like life estates, and determinable estates tail like estates tail. The rules of law concerning the rights and obligations of the tenant are practically the same. But from the standpoint of the termination of these estates such treatment tends to cause confusion. It is not to be wondered at when even a leading text writer who observes that words of collateral or special limitation merely "mark the *quantum* of an estate" also observes that "the character of an estate as one for life is not changed by the fact that it may terminate on a contingency before the end of the life." That is but following in the footsteps of Littleton and Coke. And it follows as a not surprising consequence that the same text writer is found saying: "In order to constitute a life estate it is not necessary that the estate be such that it must continue during the life or lives named; it being sufficient that it may so continue, though liable to be *cut off*[40] by the happening of a contingency before

[35] First Universalist Church, Petitioner, Mass. Land Ct. Decisions, 209.

[36] 3 Gray, 142, 147.

[37] Perpetuities, Sec. 13.

[38] Leake: Prop. in Land (2d Ed.), 162.

[39] In English books an estate tail subject to a collateral limitation is often spoken of as a fee tail with *proviso for cesser.* Leake: Prop. in Land (2d Ed.), 163.

[40] The italics are supplied. Compare with this the clear statement of the effect of the contingency upon a determinable life estate in Harrison v. Foote, 9 Tex. Civ. App. 576, 580: "The home as it exists is to continue,

the termination of such life or lives." Whereas if it had been the habit to treat ordinary life estates and determinable life estates as co-ordinate and distinct kinds of freeholds, the temptation to use the word "cut off," or other words suggestive of and generally used as meaning a premature termination would have been slight. But it would be profitless to quarrel with the beaten track.

It is more difficult to surrender to a practice of treating determinable estates for years as of a kind with the ordinary estates for years. As has been indicated, that which determines the nature of the ordinary estate for years is the certainty of the time of its beginning and its ending. But the ending of a determinable estate for years is precisely as contingent and may be subject to the same quality of contingency as the ending of an ordinary life estate.[41] The most familiar illustration[42] of the determinable estate for years is a lease for twenty-five years if A shall so long live.[43] The statement of Coke that such a lease is "certain in uncertainty"[44] does not much affect the matter.

but when the use of the land as a home shall cease, the purpose will have been subserved, and the estate shall determine. This is the substance of the provision. We think the purpose is to limit the life estate to the duration of the use as a home. When that terminates, the estate is to determine." And see the similar exposition, of a determinable fee however, in Henderson v. Hunter, 59 Pa. 335, 341.

[41] But a leasehold which is to terminate on the contingency of mere default by the lessee, even when it is expressly provided that the lease shall be void in such event, is subject not to a limitation but to a condition. Tiffany: Real Prop., 193; Gray: Restraints on Alienation, 101 note; Davenport v. Reg., 3 App. Cas., 115, 128, 130.

[42] But there are many other illustrations: *e. g.*, a lease during the minority of the tenant, Bishop of Bath's Case, 6 Co. 35b; a lease determinable upon notice by either party, Doe v. Baker, 8 Taunt. 241; a lease to cease when the purpose for which it was given has been satisfied, Leake: Prop. in Land (2d Ed.), 168, a lease to determine if the city should cut off the premises, Mungle v. Boston, 3 Allen 280; a lease to determine if the lessor should conclude to build on the premises, Shaw v. Hoffman, 25 Mich. 162, 172; Miller v. Levi, 442 N. Y. 489. In Ashley v. Warner, 11 Gray 43, the interest was held to be a tenancy at will subject to "conditional (collateral) limitation."

[43] Preston: I Estates, 127. "Upon the death of A, there is no residue of the *term*, though there may be a residue of the years, so that a limitation over for the residue of the *term* is void, unless by *term* is meant the *time* and not the interest"; Leake: Prop. in Land (2d Ed.), 166. This is a plain statement of the distinctions made by Lord Mansfield in Wright v. Cartwright, 1 Burr. 282.

[44] Co.: Lit. 45b.

Unlike other determinable estates the determinable fee tail may be discharged of the collateral contingency at the will of the tenant himself. The power of tenant in tail to bar the entail and convey a fee simple, an inseparable incident of the estate tail, is not affected by the collateral limitation or proviso for cesser. The collateral limitation may be destroyed by a disentailing conveyance just as a remainder expectant upon the determination of the estate tail, or an executory limitation created to operate before or after the determination of the estate tail, or a condition may be.[45] The fee simple which the grantee takes is not a determinable fee but a fee simple absolute.

It is especially needful to emphasize that the determination of the determinable fee—when this estate is recognized, as it generally is in this country—is a purely natural termination. With a few important exceptions the determinable fee may be subject to natural cesser on the same kinds of collateral contingencies as a life estate, a fee tail, or an estate for years.[46] The rule that a fee may not be made determinable on voluntary or involuntary alienation is a real and important exception. But the rule that the contingency must be one which in legal contemplation might by possibility never happen[47] is not a real exception. This rule has its parallels in the rules affecting the other determinable estates. If an estate is given to a man for

[45] Leake: Prop. in Land (2d Ed.), 164; Doe v. Scarborough, 3 A. & E. 897, 965.

[46] Preston: I Estates, 433.

[47] "So if an estate is given to a man and his heirs so long as he shall pay 20s. annually to A or as long as the Church of St. Paul shall stand, his estate is a fee simple determinable, in which case he has the whole estate in him; and such perpetuity of an estate which may continue forever, though at the same time there is a contingency which when it happens will determine the estate (which contingency cannot properly be called a condition, but a limitation) may be termed a fee simple determinable." Walsingham's Case, Plowd. 557. As the Church of St. Paul must fall some time it is obvious that the possibility that the contingency will never happen is one that is established not by the course of nature, but by law alone. Some writers have seemed to believe that if the event is one which must occur in the course of nature, the grantor would have not merely a possibility of reverter, but a reversion. See Washburn: Real Prop. (6th Ed.), 168-170; Preston: I Estates, 440. But see Challis: Real Prop. (3d Ed.), 251; First Universalist Society v. Boland, 155 Mass. 171, 174; 24 Ency. of the Laws of England, 170. And compare with the above reference to Preston his statement on page 42 of Volume I.

life determinable upon an event which must happen at a fixed point of time it would seem plainly enough to be an estate for years.[48] If land is conveyed to A and his heirs determinable upon the falling in of one or several lives what would it be but an estate *pur autre vie?* The arguments that apply in like limitations of fees[49] apply here. No estate is a determinable life estate unless it may *by possibility* endure for life. No fee tail is a determinable fee tail unless its proviso fee cesser may by possibility never happen so long as they are heirs of the body.

But this comparison should not obscure the fact that in certain respects—especially in the rules that no future interest can be limited upon it at common law,[50] and that there is no reversion expectant upon it—the determinable fee has the qualities of a fee simple.

When a life estate, a fee tail, or an estate for years terminates—whether or not the estate in question is subject to a collateral limitation, *i. e.*, determinable,—the property passes to the remainderman or the reversioner. When a determinable fee terminates, the property reverts to the grantor, who had

[48] "And just so an estate for years to a man and his heirs would not descend to the heirs of the lessee, but would pass to the lessee's executors." Littleton: Tenures, Sec. 740.

[49] "In the limitation of a determinable fee, the limitation is expressed to be made to the grantee and his heirs *until* the *happening of some future event*, which must be such a kind *that it may by possibility never happen at all.* . . . A limitation to a grantee and his heirs until the happening of some event which must in the nature of things happen sooner or later, passes no fee. If the happening of the event, though certain, is not fixed in point of time—that is, if it depends upon the dropping of a life or lives—the limitation, as will hereafter be seen, gives rise to an estate *pur autre vie.* If the happening of an event is fixed in point of time, the limitation gives rise to a term of years, which notwithstanding the naming of the heir, passes to the executor on the death of the tenant." Challis: Real Prop. (3d Ed.), 251.

[50] "The fee having been given and passed . . . there is nothing further for the subsequent limitation to operate upon," Egerton v. Massey, 3 C. B., N. S., 338. See John Chipman Gray, 3 Law Quarterly Review, 401. "The possible duration of the estate exhausts the fee." 24 Ency. of Laws of England, 171. And see further for some hints of qualification, Gray: Perpetuities, Sec. 13, and Sec. 14, note 5. "No estate can be limited by way of remainder on the regular expiration of a fee, even though it may be only a qualified fee which cannot last longer than an estate tail." Smith: Executory Interests, 165.

the possibility of reverter.[51] But there is nothing in these facts to distinguish the *nature of the termination* of these various estates. Nor is there in the further facts that remainders and reversions are true estates and generally assignable, whereas a possibility of reverter is, as its name implies, a mere possibility and, at common law, is not assignable.[52] If an estate is subject to a limitation, collateral or otherwise, as distinguished from a condition, or executory limitation, when it ends it does so by natural expiration, whatever the legal status of the claimant next in line. Even those who deny recognition to the determinable fee in estates of freehold since the Statute *Quia Emptores,* admit that the estate so long as it was legally recognized was subject to natural termination. Thus Professor Gray says:

"Some estates [before the Statute *Quia Emptores*] were terminable by special or collateral limitation; for instance an estate to A and his heirs until they cease to be tenants of the Manor of Dale. On the happening of the contingency the feoffor was in of his old estate without entry. The estate was not cut short, as it would have been by entry for breach of condition but expired by the terms of its original limitation." [53]

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[51] According to such writers as Sanders and Leake, who deny that there can be a determinable fee since the Statute *Quia Emptores,* the land would revert to the grantor by way of escheat, because as the grantor has given the entire fee there is no reversionary estate left to him to entitle him to the possession. Sanders: I Uses and Trusts, 208. Leake: Prop. in Land (2d Ed.), 25. Gray: Perpetuities, Secs. 775-777. But in First Universaljst Society v. Boland, 155 Mass. 171, probably the most mentioned American case in recognition of the determinable fee, it is said: The possibility of reverter "is in the original grantor"; and "it represents whatever is not conveyed by the deed, and it is the possibility that the land may revert to the grantor or his heirs when the granted estate determines."

[52] See Gray: Perpetuities, Sec. 14, n. 5; Tiffany: Real Prop. 195; *Contra,* Sheetz v. Fitzwater, 5 Pa. 126.

[53] Gray: Perpetuities, Sec. 13. See also, Leake: Prop. in Land (2d Ed.), 24. The words of Sanders are: "The estate reverted to the donor, not as a condition broken, of which the donor, or his heir might take advantage by entry, but as a principle of tenure, in the nature of *an escheat* upon the death of a tenant in fee simple without heirs general." Sanders: I Uses and Trusts, 209.