

1932

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Recommended Citation

Roberts, W. Lewis (1932) "The Transfer of Future Interests in Kentucky," *Kentucky Law Journal*: Vol. 20 : Iss. 2 , Article 6.
Available at: <https://uknowledge.uky.edu/klj/vol20/iss2/6>

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THE TRANSFER OF FUTURE INTERESTS IN KENTUCKY

Under the term 'future interests' are usually considered contingent remainders, executory devises, and defeasible vested remainders. At common law such interests were not transferable. However, if a contingent remainder vested in the grantor of a warranty deed, which purported to grant the interest in question before the interest had vested, then the law courts allowed it to take effect under the doctrine of deed by estoppel or if the attempted conveyance were to the person having a prior estate in the land, it was allowed to operate as a release of the grantor's interest. Such interests could be released only to one who was not a stranger to the title. Equity also would specifically enforce such an attempted conveyance of a future interest after such interest had once vested.

In this country there are still some jurisdictions that follow the common law and refuse to allow a conveyance of a future interest to stand unless it comes under one of three methods just stated, under the doctrine of deed by estoppel, a release to a party in interest, or specific performance of an executory agreement. Some jurisdictions have changed the common law rules by judicial legislation and now hold them transferable. A large number of states have passed statutes expressly stating that they are assignable, devisable, or transmissible. A fourth group have adjudged future interests within the conveyancing acts which state that all interests in land may be passed by deed or will. In this fourth group we find Kentucky.

The question whether contingent interests are "interests in land" within the conveyancing act and can be transferred like present vested estates first came before the Kentucky court in a request for specific performance and the court gave effect to the contingent remainderman's agreement to convey his interest. No mention was made of the statute and the case comes clearly within the early principle that in equity such an agreement will be treated as an executory contract to convey.¹ Six years later, however, we find the court saying that under the Kentucky statute as to conveyances, a contingent remainder in land passes

¹ *Grayson v. Tyler's Adm'r*, 1882, 80 Ky. 353.

by deed and that it may be sold under a decree of the court.² "Section 6, article 1, chapter 63," the court said, "of the General Statutes provides: 'Any interest in or claim to real estate may be disposed of by deed or will in writing.' This provision clearly embraces a contingent remainder interest in land." This proposition has been consistently maintained in later cases,³ but the court has pointed out that where the remainder never vests, the grantee gets nothing.⁴ In *Kendrick v. Scott*,⁵ however, we find the court, unmindful of its earlier decisions, saying that before the death of the life tenant the contingent remainderman has no alienable interest. In the case before the court the grantor of the remainder in question died before the life tenant did and the estate never vested. What the court evidently intended to say was that if the estate never vested the purchaser got nothing. The statement made by the court is inconsistent with its earlier and its later decisions and it is submitted that it does not represent the law in Kentucky.

The court was called upon in *McCall's Administrator v. Hampton*⁶ to determine whether the sale of an expectancy in a father's estate was valid. The court rightly decided that it was not, as such an expectancy was a naked possibility or contingency, not founded on a right or coupled with an interest. The court, however, conceded that a contingent remainder could be sold or assigned.

The Kentucky court has held that a contingent remainderman's interest can be subjected to the claims of judgment creditors under a statute governing levies on executions,⁷ and it has also held that contingent remainders belonging to infants can be sold under a statutory partition of real estate.⁸ One further case should be noted among the Kentucky decisions, that of *Lindenberger v. Cornell et al.*,⁹ where the court decided that a vested remainder subject to defeasance, may be sold and a good title conveyed by deed as in the case of a contingent remainder

² *White's Tr. v. White*, 1888, 86 Ky. 602, 7 S. W. 26.

³ *Davis v. Willson*, 1903, 115 Ky. 639, 74 S. W. 696; *Bank of Taylorsville v. Vandyke*, 1914, 159 Ky. 201, 166 S. W. 1024.

⁴ *Roy v. West, Treas.*, 1922, 194 Ky. 96, 238 S. W. 167; *Bogges v. Crail*, 1928, 224 Ky. 97, 5 S. W. (2nd) 906.

⁵ 1923, 200 Ky. 202, 254 S. W. 422.

⁶ 1895, 98 Ky. 166, 32 S. W. 406.

⁷ *Jacob v. Howard*, 1893, 15 Ky. L. R. 133, 22 S. W. 332.

⁸ *Nutter v. Russell*, 1860, 3 Metef. (Ky.) 163.

⁹ 1921, 190 Ky. 844, 229 S. W. 54.

but that in neither case will the purchaser acquire anything by his purchase if the event which creates the defeasance occurs in the one case, or if the contingency which vests the estate in the other never happens.

The rule that contingent future interests could not be conveyed grew out of the difficulty of making a transfer of an interest in land to take effect in the future under the old forms of conveyancing and also out of the policy of the law against allowing the assignment of any choses in action. The early common law judges objected to anything that looked like a sale of a law suit. Champerty and maintenance were anathema to them. All this has long since been changed and today there is no good reason why future interests should not be transferable. The Court of Appeals in Kentucky reached a right result when it held that such interests came within the meaning of the conveyancing act.

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