

The History of a Maryland Title: a Conveyancer's Romance Renewed Uriel H. Crocker

David H. Fishman

Follow this and additional works at: <http://digitalcommons.law.umaryland.edu/mlr>



Part of the [Property Law and Real Estate Commons](#)

Recommended Citation

David H. Fishman, *The History of a Maryland Title: a Conveyancer's Romance Renewed Uriel H. Crocker*, 42 Md. L. Rev. 496 (1983)
Available at: <http://digitalcommons.law.umaryland.edu/mlr/vol42/iss3/5>

This Article is brought to you for free and open access by the Academic Journals at DigitalCommons@UM Carey Law. It has been accepted for inclusion in Maryland Law Review by an authorized administrator of DigitalCommons@UM Carey Law. For more information, please contact smccarty@law.umaryland.edu.

THE HISTORY OF A MARYLAND TITLE: A CONVEYANCER'S ROMANCE RENEWED

URIEL H. CROCKER

AS RETOLD BY DAVID H. FISHMAN*

We live in a time of law reform. Many who cherish the old and the traditional believe that the law of real property should be a bastion of the older approach and of the "old learning." Some say that reform of the law of real property is "a Herculean task, beyond the power of contemporary mortals," and that "no person, no force strong enough" is competent to tackle the job.¹ In Maryland, however, there has been much change in the body of property law in recent years; over the past century, many areas of the law of real property have changed beyond recognition. The change has been gradual, but persistent. Even without conscious broad-scale reform on the English model of the early 1920's, Maryland has, bit by bit, altered the original mass of land law as received in this state. It is only rarely that the old learning jumps up to bite the unsuspecting citizen (and his lawyer!).

In 1875, Uriel H. Crocker, a member of the Boston Bar,² published an article entitled "The History of a Title: A Conveyancer's Romance"³ in the *American Law Review*.⁴ The article is a fictional account of the title to a parcel of property in Boston and the operation of various obscure principles of real property law which resulted in multiple and unexpected changes of ownership of the property over a very

© Copyright David H. Fishman, 1983.

* A.B. 1959, Johns Hopkins Univ.; LL.B. 1963, Harvard University School of Law. Member of the Maryland Bar. Partner, Gordon, Feinblatt, Rothman, Hoffberger & Hollander, Baltimore, Maryland. The author acknowledges with thanks the assistance of Professor Russell R. Reno in clarifying some of the more difficult historical points in the first part of this article.

1. Dukeminier, *Cleansing the Stables of Property: A River Found at Last*, 65 IOWA L. REV. 151, 151 (1979); see also Hartogensis, *Maryland Statutory Modifications of the Common Law of Real Property*, 1 MD. L. REV. 239 (1936) (discussing reform of Maryland real property law).

2. Uriel H. Crocker (1832 - 1902) was born in Boston, graduated from Harvard, and practiced law in Boston. He authored *Notes on Common Forms* and *Notes on the Public Statutes of Massachusetts*. 1 WHO WAS WHO 277 (1968).

3. Crocker, *The History of a Title: A Conveyancer's Romance*, 10 AM. L. REV. 60 (1875).

4. The *American Law Review* was published in New York from 1866 to 1940. It was known as the *American Law Review* from October 1866 to July 1879, the *U.S. Law Review* from July 1879 to December 1939, and the *New York Law Review* from December 1939 to December 1940, at which time it ceased publication.

few years. I first happened upon this article though a citation in Casner and Leach's casebook on real property.⁵ I read it again while preparing a chapter on title insurance for a book on Maryland residential real property transactions,⁶ and thought it would be useful in an analysis of the evolution of Maryland real property law over the last century. Accordingly, I here retell the history of this title, only moving the locale from Boston to Baltimore, setting it in the period from 1865 to 1881, rather than 1860 to 1875, replacing references to Massachusetts law with citations to appropriate Maryland statutes, texts, and decisions, and making minor changes in the tale to accommodate differences between Massachusetts and Maryland law. The story, as relocated and updated, is set forth as a narrative *interrupted by passages* detailing the evolution of the principles of Maryland real property law that are pertinent to the story. Here, then, begins the tale:

Of the locality of the parcel of real estate, the history of the title of which it is proposed to relate, it may be sufficient to say that it lies in the city of Baltimore within the limits of the territory ravaged by the great Clay Street fire on July 25, 1873.⁷ In 1865, this parcel of land was in the undisturbed possession of Mr. William Ingalls, who referred his title to it to the will of his father, Mr. Henry Ingalls, who died in 1835. Mr. Ingalls, the elder, had been a very wealthy citizen of Baltimore; and when he made his will a few years before his death, he owned this parcel of real estate, worth about \$50,000, and possessed, in addition, personal property and some small parcels of real property to the amount of between \$200,000 and \$300,000. By his will he specifically devised this parcel of land to his wife, for life, and upon her death to his only child, the William Ingalls before mentioned, in fee. His will further directed his executor to pay to two nephews, William and Arthur Jones, the sum of \$25,000 each to be charged against the residue of the estate, both real and personal. He also gave the large residue of his property to his son, William. After the date of his will, however, Mr. Henry Ingalls engaged in some unfortunate speculations and lost most of his land holdings; and upon the settlement of his estate the residue of his real and personal property proved to be barely sufficient for the payment of his debts, and the nephews got no portion of their legacies.

5. A. CASNER & W. LEACH, CASES AND TEXT ON PROPERTY 897 n.16 (2d ed. 1969).

6. MARYLAND INSTITUTE OF CONTINUING PROFESSIONAL EDUCATION OF LAWYERS, RESIDENTIAL REAL ESTATE TRANSACTIONS (1981).

7. The Clay Street fire was the largest conflagration in Baltimore prior to the Great Fire of 1904. It received broad coverage in the national press. See, e.g., Frank Leslie's Illustrated Weekly, Aug. 9, 1873, at 1.

The large parcel of real estate we are concerned with, however, afforded to the widow a comfortable income, which enabled her during her life to support herself in a respectable manner.

Upon her death, in 1850, the son entered into possession of the estate, which had gradually increased in value; and he had been enjoying for fifteen years a handsome income derived therefrom, when he was one day surprised to hear that the two cousins, whom his father had benevolently remembered in his will, had advanced a claim that this real estate should be sold by his father's executor, and the proceeds applied to the payment of their legacies. This claim, now first made thirty years after the death of his father, was of course a great surprise to Mr. Ingalls. He had entertained the popular idea that twenty years' possession effectually cut off all claims. Here, however, were parties, after thirty years' undisputed possession by his mother and himself, setting up in 1865 a claim arising out of the will of his father, that will having been probated in 1835. Nor had Mr. Ingalls ever dreamed that the legacies given to his cousins could in any way have precedence over the specific devise of the parcel of real estate to himself. It was, as a matter of common sense, so clear that his father had intended by his will first to provide for his wife and son, and then to make a generous gift out of the residue of his estate to his nephews, that during the thirty years that had elapsed since his death it had never occurred to anyone to suggest any other disposal of the property than that which had been actually made. Upon consulting with counsel, however, Mr. Ingalls learned that although the time within which most actions might be brought was limited to a specified number of years,⁸ there was no such limitation affecting the bringing of an action to recover a legacy.

This advice of Mr. Ingalls' counsel was confirmed as correct by the Court of Appeals only a few years later in Ogle v. Tayloe,⁹ which held that "legacies are not barred by the statute of limitations," and refused to apply laches on the facts.¹⁰ The law in Maryland continued to be such for a while.¹¹ As to actions against administrators directly, a statute of limita-

8. See Statute of Limitations, 21 Jac. 1, ch. 16, § 1 (1623) (limitations on the recovery of land are 20 years); 2 J. ALEXANDER, BRITISH STATUTES IN FORCE IN MARYLAND *446; Wickes v. Wickes, 98 Md. 307, 325, 56 A. 1017, 1025 (1904) (land held by adverse possession).

9. 49 Md. 158, 176 (1878).

10. *Id.* at 176. Ogle's suit was filed in 1872 for a legacy under the will of a testator who died in 1844. The trial court rendered its decision in 1877, but the opinion on appeal does not indicate the reasons for the six-year delay in the lower court.

11. See Constable v. Camp, 87 Md. 173, 178, 39 A. 807, 808 (1898) (statute of limitations inapplicable because property in essence was held in trust, but laches barred the plaintiff's case).

tions applied.¹² Now, however, both personal representatives and heirs are protected by a statute of limitations.¹³

Mr. Ingalls also learned that as he was an only child, and as his father's will gave him, after his mother's death, the same estate that he would have taken by inheritance had there been no will, the law looked upon the devise to him as void, and deemed him to have taken the estate by descent. What he had supposed to be a specific devise of the estate to him was then a void devise, or no devise at all; and his parcel of real estate, being in the eye of the law simply a part of an undevisee residue, was of course liable to be sold for the payment of those legacies contained in his father's will which were expressly made charges on the residuary real estate! It was an asset which the executor was bound to apply to that purpose. This exact point had been determined in the then recent case of *Mitchell v. Mitchell*.¹⁴

*This is but one manifestation of the "Doctrine of Worthier Title" which is presumably still in force in Maryland when the testator leaves one heir.*¹⁵

Thus, Mr. Ingalls was finally compelled to see the estate, the undisputed possession of which he had enjoyed for so many years, sold at auction by the executor of his father's will for \$135,000, not quite enough to pay the legacies to his cousins, which legacies, with interest

12. See *Biays v. Roberts*, 68 Md. 510, 514, 13 A. 366, 368 (1888) (statute of limitations begins running upon filing of final account); 2 P. SYKES, *PROBATE LAW & PRACTICE* § 1027 (1956).

13. MD. EST. & TRUSTS CODE ANN. § 10-103 (1974) states:

(a) *Proceedings Against Personal Representative*. — If no action or proceeding involving the personal representative is pending one year after the close of the estate pursuant to § 10-101, the personal representative shall be discharged from any claim or demand of any interested person

(b) *Claims Against Heirs and Legatees*. — Except as provided in §§ 10-102 and 11-109, the right of a person seeking to recover property improperly distributed, or the value of it, from a person to whom property has been distributed is forever barred at the later of

(1) Three years from the death of decedent, or

(2) One year from time of distribution of the property

14. 21 Md. 244, 253-54 (1864).

15. *Gilpin v. Hollingsworth*, 3 Md. 190, 192 (1852); *Donnelly v. Turner*, 60 Md. 81, 84 (1883); see generally *Reno, The Doctrine of Worthier Title as Applied in Maryland*, 4 MD. L. REV. 50, 55 (1939); E. MILLER, *CONSTRUCTION OF WILLS IN MARYLAND* § 79 (1927); *Bostick, Loosening the Grip of the Dead Hand: Shall We Abolish Legal Future Interests in Land?*, 32 VAND. L. REV. 1061, 1075-78 (1979) (discussing this doctrine). The doctrine rarely has appeared in Maryland in this century, see *Stiller, Russell R. Reno, Sr.: Teacher and Scholar*, 34 MD. L. REV. 225, 242 (1974) (no reported Maryland cases from 1939 to 1974), but "this lack of judicial activity should not lull the practitioner into thinking that the doctrine has no modern significance." *Id.* Although reported cases are rare, the Court of Appeals has used the doctrine as a rule of construction. See, e.g., *Allen v. Safe Deposit & Trust Co.*, 177 Md. 26, 7 A.2d 180 (1939).

from the expiration of one year after the testator's death, amounted at the time of the sale in 1866 to \$143,000. The Messrs. Jones themselves purchased the estate at the sale, deeming the purchase a good investment of the amount of their legacies, and Mr. Ingalls instituted a system of stricter economy in his domestic expenses, and pondered much on the uncertainty of the law and the mutability of human affairs.

By one of those curious coincidences that so often occur, Messrs. William and Arthur Jones had scarcely begun to enjoy the increased supply of pocket money afforded them by the rents of their newly acquired property, when they each received one morning a summons to appear before the Superior Court of Baltimore City, "to answer unto John Bolton in an action of ejectment," the premises described in the writ being their newly acquired estate.

The Messrs. Jones were at first rather startled by this unexpected proceeding; but as they had, when they received their deed from Mr. Ingalls' executor, taken the precaution to have the title to their estate examined by a conveyancer, who had reported that he had carried his examination as far back as the beginning of the century, and had found the title perfectly clear and correct, they took courage, and waited for further developments. It was not long, however, before the facts upon which the action of ejectment had been founded were made known. It appeared that for some time prior to 1750 the estate had belonged to one John Buttolph, who died in that year, leaving a will in which he devised the estate "to my brother Thomas, and, if he shall die without issue, then I give the same to my brother William." Thomas Buttolph had held the estate until 1775, when he died, leaving an only daughter, Mary, at that time the wife of Timothy Bolton. Mrs. Bolton held the estate until 1786, when she died, leaving two sons and a daughter. This estate she devised to her daughter, who subsequently, in 1810, conveyed it to Mr. Henry Ingalls, before mentioned. Peter Bolton, the oldest son of Mrs. Bolton, was a non-compos mentis, but lived until the year 1859, when he died at the age of 75. He left no children, having never been married.

John Bolton, the plaintiff in the action of ejectment, was the oldest son of John Bolton, the second son of Mrs. Mary Buttolph Bolton, and the basis of the title set up by him was substantially as follows. He claimed that under the decision in *Dallam v. Dallam's Lessee*,¹⁶ the will of John Buttolph had given to Thomas Buttolph an estate tail, the law construing the intention of the testator to have been that the estate should belong to Thomas Buttolph and to his issue as long as such issue

16. 7 H. & J. 220, 236 (Md. 1826).

should exist, but that upon the failure of such issue, whenever such failure might occur, whether at the death of Thomas or at any subsequent time, the estate should go to William Buttolph.

In 1750, the date of John Buttolph's death, the words "die without issue" were construed to mean indefinite failure to issue at any time in the future, and thus equivalent to the words "heirs of his body," thus creating a fee tail general estate. In 1862, the General Assembly provided that such words in a will should be construed to mean definite failure, at the death of the first taker.¹⁷ The same provision as to deeds was later enacted.¹⁸ Thus, after 1862, Thomas would have taken a fee simple estate under the wording of John Buttolph's will. Thomas' fee simple, however, would have been subject to a gift over to his brother William if Thomas had died without issue.¹⁹ Because he did not die without issue, this gift over, called an "executory interest," failed, and a fee simple absolute would have vested in Thomas' daughter, Mary, by his will. This apparently was the construction placed on the will of John Buttolph by the lawyer who examined the title for Henry Ingalls when he purchased the land from the daughter of Mary Bolton in 1810.²⁰

It had also been decided in *Chelton v. Henderson*,²¹ and *Smith v. Smith*,²² that prior to the Act to Direct Descents of 1786²³ an estate tail did not descend in Maryland, like other real estate, to all the children of the deceased owner in equal shares, but, according to the old English rule of primogeniture, exclusively to the oldest son, if any, and to the daughters only in default of any son;²⁴ and it had been further recognized in the landmark case of *Newton v. Griffith*²⁵ that prior to the Act

17. 1862 Md. Laws ch. 161, *superseded by* MD. EST. & TRUSTS CODE ANN. § 4-410 (1974).

18. 1886 Md. Laws ch. 236, *superseded by* MD. REAL PROP. CODE ANN. § 2-113 (1974).

19. *Dallam v. Dallam's Lessee*, 7 H. & J. 220, 244 (Md. 1826); *Gambrill v. Forest Grove Lodge*, 66 Md. 17, 27-28, 5 A. 548, 550-51 (1886); E. MILLER, *supra* note 15, § 365, at 1026 n.3.

20. *See Note, Construction of the Phrase "Death Without Issue" and Similar Terms*, 11 MD. L. REV. 25 (1950).

21. 9 Gill 432, 437 (Md. 1850).

22. 2 H. & J. 314, 318 (Md. 1806).

23. 1786 Md. Laws ch. 45, *amended by* 1820 Md. Laws ch. 191.

24. *Smith v. Smith*, 2 H. & J. 314, 318 (1808); E. MILLER, *supra* note 15, at 263 n.1; *Hartogensis, supra* note 1, at 242. But estates tail not converted to fee simple by the Act to Direct Descents continued to descend by primogeniture. *E.g.*, *Wickes v. Wickes*, 98 Md. 307, 56 A. 1017 (1904) (descent of an estate in fee tail in 1869 was to the eldest son to the exclusion of seven other children); *see generally* T. ATKINSON, HANDBOOK OF THE LAW OF WILLS 23-36 (2d ed. 1953) (law of primogeniture).

25. 1 H. & G. 111, 130-32 (Md. 1827); *see Josetti v. McGregor*, 49 Md. 202, 211-15 (1878) (discussing *Newton*). Miller devotes a full section to the case. *See* E. MILLER, *supra* note 15, § 366, at 1028-29.

to Direct Descents, an estate tail could not be devised or in any way affected by the will of a tenant in tail.²⁶

The Act to Direct Descents of 1786 virtually abolished estates tail general (i.e., a grant to A and the heirs of his body). Any remaining doubt as to this result was removed by the General Assembly in 1820.²⁷ Estates tail special (i.e., a grant to A and the heirs of his body borne by Mrs. A), however, continued to be possible in Maryland²⁸ until 1916. In that year, estates tail special were converted by statute into estates in fee simple.²⁹

Mr. John Bolton claimed then that the estate tail given by the will of John Buttolph to Thomas Buttolph had descended at the death of Thomas to his only child, Mary Bolton; that at her death in 1786, instead of passing, as had been supposed at the time by virtue of her will, to her daughter, that will had been wholly without effect upon the estate, which had, in fact, descended to her oldest son, Peter Bolton. Peter Bolton had indeed been disseized in 1810, if not before, by the acts of his sister in taking possession of and conveying away the estate; but, as he was a non-compos mentis during the whole of his long life, the Statute of Limitations did not begin to run against him. His heir in tail, namely, John Bolton, the oldest son of his then deceased brother, John,

26. *Laidler v. Young's Lessee*, 2 H. & J. 69, 71 (1807). Furthermore, prior to 1782, fee tail estates could only be disentailed by the tenant in tail suffering a "Common Recovery," a fictitious law suit resulting in the conveyance of a fee simple absolute estate to the plaintiff and leaving a worthless judgment for the value of the land for the benefit of the future "heirs of the body." See AMERICAN LAW INSTITUTE, MARYLAND ANNOTATIONS TO RESTATEMENT OF PROPERTY § 79 (1943); R. VENABLE, LAW OF REAL PROPERTY AND LEASEHOLD ESTATES IN MARYLAND 15 (1892). After that date, see 1782 Md. Laws, ch. 23, the law authorized the disentailing of land by an ordinary conveyance. This statute is now codified as MD. REAL PROP. CODE ANN. § 2-102 (1974).

27. 1820 Md. Laws ch. 191. After this statute all estates tail general descended as fee simple estates to both male and female issue. The estate tail was, therefore, defeated.

28. See R. VENABLE, *supra* note 25, at 16 (1892). A grant to A and his heirs, *male or female*, is an estate tail special. *Pennington v. Pennington*, 70 Md. 418, 435-36, 17 A. 329, 329 (1889).

29. 1916 Md. Laws ch. 325, stated: "If any person seized of an estate in lands, tenements or hereditaments, lying in this State, in fee simple, fee simple conditional, or in fee tail, general or special, shall die intestate thereof, said lands, tenements or hereditaments shall descend in fee simple"

The successors to the 1916 statute appear in the Real Property and Estates & Trust Codes. See MD. REAL PROP. CODE ANN. § 2-102 (1974) ("Any person seized of an estate tail, in possession, reversion, or remainder, in any land, tenement, or hereditament may grant or sell it in the form of a grant as if he were seized of an estate in fee simple and the grant is good and available, to all intents and purposes, against every person whom the grantor might debar by any mode of common recovery, or by any other means."); MD. EST. & TRUSTS CODE ANN. § 4-408 (1974) ("Unless a contrary intent is expressly indicated in the will, a legacy passes to the legatee the entire interest of the testator in the property which is the subject of the legacy.").

was allowed by the Statute of 21 James I, ch. 16, § II (1623), in force in Maryland,³⁰ to bring his action within ten years after his uncle Peter's death. As these ten years did not expire until 1869, this action, brought in 1868, was seasonably commenced; and it was prosecuted with success, judgment in his favor having been recovered by John Bolton in 1869.

The correctness of this decision and analysis was recognized by the Court of Appeals only a few years later in Wickes v. Wickes.³¹ The British statute has since been repealed in Maryland,³² and the ten year period after removal of the disability is now usually three years.³³

The case of *Bolton v. Jones* was naturally a subject of remark among the legal profession; and it happened to occur to one of the younger members of that profession that it would be well to improve some of his idle moments by studying up the facts of this case in the Baltimore City Land Record Office. Curiosity promoted this gentleman to extend his investigation beyond the facts directly involved in the case, and to trace the title of Mr. John Buttolph back to an earlier date. He found that Mr. Buttolph had purchased the estate in 1730 of one Hosea Johnson, to whom it had been conveyed in 1710 by Benjamin Parsons. The deed from Parsons to Johnson, however, conveyed the land to Johnson simply, without any mention of his "heirs"; and the young lawyer, having only recently completed his reading in the area of real property law preparatory to being called to the Bar, was familiar with the statute enacted in Maryland in 1856³⁴ which for the first time eliminated the common-law requirement that a fee simple estate could be created only by use of the word "heirs."³⁵ He thus perceived that Johnson took under this deed only a life estate in the granted premises, and that at his death the premises reverted to Parsons or to his heirs.

Prior to 1856,³⁶ a deed which omitted the word "heirs" in the grant-

30. See 2 J. ALEXANDER, *supra* note 8, *446, *460.

31. 98 Md. 307, 326, 56 A. 1017, 1025 (1904). *Wickes* was decided in 1904, but concerned an entail created in 1732. It received some notoriety when the decision was rendered by the Kent County Circuit Court in 1903. *An Entail Created in 1732 Still Holds Good — Decision in Kent County — Case of Charlotte A. Strong and Others Against Robert Wickes, Involving Right to Landed Property*, *The Sun* (Baltimore) Feb. 27, 1903, at 10, col. 1. I doubt that *The Sun* would find space for this story today.

32. MD. REAL PROP. CODE ANN. § 14-115 (1974).

33. MD. CTS. & JUD. PROC. CODE ANN. § 5-201(a) (1980) (the lesser of three years or the applicable period of limitations after the date the disability is removed).

34. 1856 Md. Laws ch. 154.

35. 1 RESTATEMENT OF PROPERTY § 27 (1936); *accord* *Hofsass v. Mann*, 74 Md. 400, 22 A. 65 (1891).

36. 1856 Md. Laws ch. 154, *superseded by* MD. REAL PROP CODE ANN. § 4-105 (1974). See E. MILLER, *supra* note 15, § 100, at 276 n.8.

*ing clause created only a life estate.*³⁷

The young lawyer, being of an enterprising spirit, thought it would be well to follow out the investigation suggested by his discovery. He found, to his surprise, that while Hosea Johnson had conveyed the property to John Buttolph in 1730, he did not die until 1786, the estate having, in fact, been purchased by him for a residence when he was twenty-one years of age, and about to be married. He had lived upon it for twenty years, but had then moved his residence to another part of Baltimore County, and sold the estate, as we have seen, to Mr. Buttolph. When Mr. Johnson died, in 1786, at the age of ninety-seven, it chanced that the sole party entitled to the reversion, as heir of Benjamin Parsons, was a young woman, his granddaughter, aged eighteen, and just married. This young lady and her husband lived, as sometimes happens, to celebrate their diamond wedding anniversary in 1861, but died during that year. As she had been under the legal disability of coverture from the time when her right of entry upon the estate, as heir of Benjamin Parsons, first accrued in 1786, at the termination of Johnson's life estate, the provision of the Statute of Limitations, before cited, gave her heirs ten years after her death within which to bring their action.

*"Coverture," i.e., marriage, was a disability which tolled the period of limitations prior to 1894.*³⁸

These heirs of Benjamin Parsons' granddaughter proved to be three or four people of small means, residing in remote parts of the United States. What arrangements the young lawyer made with these parties and also with a Mr. John Sharpe, a speculating moneyed man of Baltimore, who was supposed to have furnished certain necessary funds, he was wise enough to keep carefully to himself. Suffice it to say that in 1870 an action was brought by the heirs of Benjamin Parsons to recover from Bolton the land which he had just recovered from William and Arthur Jones. In this action the plaintiffs were successful, and they had no sooner been put in formal possession of the estate than they conveyed it, now worth a couple of hundred thousand dollars, to the aforesaid Mr. John Sharpe, who was popularly supposed to have obtained in this case, as he usually did in all financial operations in which he was concerned, the lion's share of the plunder. The Parsons

37. *E.g.*, *Hofsass v. Mann*, 74 Md. 400, 407, 22 A. 65, 66 (1891) (1842 deed omitting "heirs" giving grantee a life estate only); *see also* *Hartogensis*, *supra* note 1, at 253; NOTES ON TITLES § 78 (Title Guarantee & Trust Co. 1903) (citing Maryland cases).

38. 1894 Md. Laws ch. 661. *See* *Amey v. Cockey*, 73 Md. 297, 306, 20 A. 1071, 1073 (1890) (coverture tolled time period for avoiding a deed until a reasonable time after disability ceased).

heirs, probably, realized very little from the results of the suit; but the young lawyer obtained sufficient remuneration to establish him as a brilliant speculator in suburban lands, second mortgages, and land patent rights. Mr. Sharpe had been but a short time in possession of his new estate when the great fire of July, 1873, swept over it. He was, however, a most energetic citizen, and the ruins were not cold before he was at work rebuilding. He bought an adjoining lot in order to increase the size of his estate, the whole of which was by early in 1875 covered by an elegant building, conspicuous on the front of which could be seen his initials, "J.S.," cut in the stone.

While the estate which had once belonged to Mr. William Ingalls, was passing from one person to another in the bewildering manner we have endeavored to describe, Mr. Ingalls had himself, for a time, looked on in amazement. It finally occurred to him, however, that he would go to the root of this matter of the title. He employed a skillful conveyancer to trace that title back, if possible, to Lord Baltimore. The result of this investigation was that it appeared that the parcel which he had himself owned, together with the additional parcel bought and added to it by Sharpe, had, in 1690 constituted one parcel, which was then the "possession" of one "Maudid Engle," who subsequently, in 1695, under the name of "Mauditt Engles," conveyed it to John Carroll, on the express condition that no building should ever be erected on a certain portion of the rear of the premises conveyed. Now it had so happened that this portion of these premises had never been built upon before the great fire, but Mr. Sharpe's new building had covered the whole of the forbidden ground. It was evident, then, that the condition had been broken; that the breach had occurred so recently that the right to enforce a forfeiture was not barred by the statute, and could not be deemed to have been waived by any neglect or delay; and that consequently, under the decision in *Dolan v. Mayor & City Council of Baltimore*,³⁹ a forfeiture of the estate for breach of this condition could now be enforced if the true parties entitled by descent and by residuary devises under the original "Engle" or "Engles" could only be found. It occurred to Mr. Ingalls, however, that this name, "Engles," bore a certain similarity in sound to his own; and as he had heard that during the early years after the settlement of this country, great changes in the spelling of names had been brought about, he instituted an inquiry into his own genealogy, the result of which was, in brief, that he found he could prove himself to be the identical person entitled, as a remote heir of Maudid Engle, to enforce, for breach of the condition in the old

39. 4 Gill 395, 404-06 (Md. 1846).

deed of 1695, the forfeiture of the estate now in the possession of John Sharpe.

The correctness of Mr. Ingalls' theory was confirmed only shortly thereafter by the Court of Appeals in Reed v. Stouffer.⁴⁰ The forfeiture of an estate upon breach of a condition in the grant creating the estate was long recognized in Maryland,⁴¹ until the legislature required the periodic reregistration of restrictions and conditions in order to keep them alive.⁴² This statute is in keeping with a general trend of reform in this area of the law all over the country.⁴³

When Mr. Sharpe heard of these facts, he felt that a retributive Nemesis was pursuing him. He lost the usual pluck and bulldog determination with which he had been accustomed to fight at the law all claims against him, whether just or unjust. He consulted the spirits; and they rapped out the answer that he must make the best settlement he could with Mr. Ingalls, or he would infallibly lose all his fine estate — not only that part which Mr. Ingalls had originally held, and which he had obtained for almost nothing from the heirs of Benjamin Parsons — but also the adjoining parcel for which he had paid its full value, together with the elegant building which he had erected at a cost exceeding the whole value of the land. Mr. Sharpe believed in the spirits; they had made a lucky guess once in answering an inquiry from him; he was getting old; he had worked like a steam-engine during a long and busy life, but now his health and his digestion were giving out; and when the news of Mr. Ingalls' claim reached his ears, he became, in a word, demoralized. He instructed his lawyer to make the best settlement of the matter that he could, and a settlement was soon effected by which the whole of Mr. Sharpe's parcel of land in the burnt district was conveyed to Mr. Ingalls, who gave back to Mr. Sharpe a mortgage for the whole amount which the latter had expended in the erection of his building, together with what he had paid for the parcel added by him to the original lot. Mr. Sharpe, not liking to have any thing to remind him of his one unfortunate speculation, soon sold and assigned this

40. 56 Md. 236, 253-55 (1881) (title to property immediately vests in grantor's heirs upon violation of limiting condition of deed).

41. See 1 RESTATEMENT OF PROPERTY § 44, comment e and illus. 7 (1936); AMERICAN LAW INSTITUTE, *supra* note 26, § 56; see also *Report of the Special Committee on Possibilities of Reverter and Rights of Entry* (1968) (summary of Maryland law as of 1968), reprinted in LEGISLATIVE COUNCIL OF MARYLAND, REPORT TO THE GENERAL ASSEMBLY OF 1969 480-92 (1968).

42. See MD. REAL PROP. CODE ANN. §§ 6-101 to 6-105 (1981).

43. See Chaffin, *Reverters, Rights of Entry and Executory Interests: Semantic Confusion and the Tying Up of Land*, 31 FORDHAM L. REV. 303, 321 n.71 (1962) (legislation in other states limiting time periods for rights of entry and possibilities of reverter).

mortgage to the Maryland Life Insurance Company; and as the well-known counsel of that institution has now examined and passed the title, we may presume that there are in it no more flaws remaining to be discovered.

In conclusion, we may say that Mr. William Ingalls, after having been for some ten years a reviler of the law, especially of that portion of it which relates to the title to real estate, is now inclined to look more complacently upon it, being again in undisturbed and undisputed possession of his old estate, now worth much more than before, and in the receipt therefrom of an ample income which will enable him to pass the remainder of his days in comfort, if not in luxury. But, though Mr. Ingalls is content with the final result of the history of his title, those lawyers who are known as "conveyancers" are by no means happy when they contemplate that history, for it has tended to impress upon them how full of pitfalls is the ground upon which they are accustomed to tread, and how extensive is the knowledge and how great the care required of all who travel over it; and they now look more disgusted than ever, when, as so often happens, they are requested to "just step over" to the Record Office and "run down" a title; and are informed that the title is a very simple one, and will take only a few minutes; and that So-and-so, "a very careful man," did it in less than half an hour last year, and found it all right, and that his charge was five dollars.