of equity and by pleading that his property rights were about to be interfered with he would be able to thwart criminal justice.[13] This reason should not be allowed to permit unwarranted police interference with one's business.

It is submitted that the best way for a court of equity to approach this problem, granting that jurisdiction exists, is to look at the circumstances of the individual case. It may consider the plaintiff's conduct bad and refuse to take jurisdiction on the "clean hands" maxim. It must, in any event, decide whether the officers are performing official duties in a lawful manner and also whether the evidence as to the illegality of the plaintiff's business is sufficient to justify police interference. Equity must be controlled, however, by broad principles of policy and must exercise considerable caution whenever its decree will interfere with the enforcement of the criminal law.

R. L. R.

REAL PROPERTY

Deeds — Fee Simple Determinable — Necessity for Words of Inheritance in Reverter Clause.

Defendants in an action to quiet title claimed a reversionary interest as heirs of a grantor under an 1849 deed. The deed provided: ". . . The above tract is granted to . . . trustees of aforesaid New Church Society . . . and their heirs forever, to be held by them in trust forever . . . Now the conditions of this grant . . . is that the above named meeting house is to be used for New Church purposes. Provided that should it ever cease to be used for said purposes that then the land is to return to its original owners."

The court rejected the defendant's claim of a reversionary interest and held that the grant created a fee simple absolute. It said that the reverter clause was not of sufficient force to make the grantee's estate a determinable fee in the absence of words of inheritance used with the reversionary interest. *First New Jerusalem Church* v. *Singer,* 68 Ohio App., 119 (1942).[1]

The primary rule in construing conveyances is to effectuate the intention of the grantor,[2] and no special words are essential to create

[13] Snyder v. Swope, Director of Safety, 23 Ohio L. R. 361, 366 (1922).

[1] For authority *contra, see* cases discussed in article, *Reversionary Restrictions,* (1940) U. Cin. L. Rev. 524, 526-532, which are *contra* by implication.

[2] 13 O. Jur. 891; *see* Post v. Weil, 115 N. Y. 361 (1889).

a fee simple which will be determinable rather than absolute.[3] In construing intention, the court should look to the whole instrument rather than any particular clause.[4] Here the grantor's intention was obviously to create a fee simple determinable, retaining a reversionary interest by means of which possession could be taken when the premises were no longer used for the purpose stipulated.

The court said the reverter clause might possibly be construed as a covenant but not as a condition. The presence of an express forfeiture clause would seem to negative any intention to create a covenant alone,[5] and would seem to present at least as strong a case for a determinable fee as *Sperry* v. *Pond*,[6] where such a fee was found in a grant in fee simple "so long as used for church purposes . . . and no longer." The court in the principal case distinguished the *Sperry case* on the grounds that "there the limitation occurred immediately as a qualification of the granting clause, whereas here there was an unconditional grant of fee simple absolute which is by the reverter clause sought to be modified." However, such a distinction seems arbitrary. Mere punctuation should not change the result where the intention is clear. In the leading Ohio case of *In re Copps Chapel*,[7] a refusal to recognize a determinable fee was supported by the debatable principle that an estate created in the granting clause cannot be cut down by the *habendum clause*.[8] However, that theory is not applicable in the principal case; here the reverter clause was an integral part of the granting clause.

As sole authority for the requirement of words of inheritance in the reverter clause, the court quoted the syllabus of *Embleton* v. *McMechen*,[9] which held words of inheritance necessary to create

[3] 1 TIFFANY, REAL PROPERTY (3rd Ed.) 385, footnotes 46, 48. In the principal case, the language seems appropriate to the creation of a fee simple determinable with possibility of reverter, but the analysis of the case would be similar for finding a fee simple on condition subsequent with right of re-entry. For distinction between the two types of fees *see* 1 TIFFANY, REAL PROPERTY (3rd Ed.) p. 380.

[4] *See* note, (1938) 22 MINN. L. REV. 557, 558 and cases there cited. 4 TIFFANY, REAL PROPERTY (3rd Ed.), p. 66.

[5] A stipulation in a conveyance or devise will be construed, if possible, not to create a condition. 1 TIFFANY, REAL PROPERTY (3rd Ed.) p. 309; 13 O. JUR. 956, 957; footnotes 6 and 7, *supra*. But here the language seems to show a clear intention to create a condition.

[6] Sperry v. Pond, 5 Ohio 388 (1832).

[7] *In Re* Copps Chapel, 120 Ohio St. 309, 166 N. E. 218 (1929), noted (1929) 9 BOSTON L. REV. 291; (1929) 3 U. CIN. L. REV. 491; (1930) 15 IA. L. REV. 206; (1939) 14 MINN. L. REV. 187; (1929) 39 YALE L. J. 135.

[8] 4 TIFFANY, REAL PROPERTY (3rd Ed.), p. 61. But in any case intention should be construed in light of the whole instrument. See footnote 4, *supra*.

[9] Embleton v. McMechen, 110 Ohio St. 18, 143 N. E. 177, 34 A. L. R. 689 (1924).

a fee simple in an executory estate in a 1904 deed. This was the common law rule as to grants, including grants of executory estates. The rule has since been changed by G. C. 8510-1 (1925) making words of inheritance unnecessary in grants by deed. Inasmuch as the deed in the principal case was made in 1849, the common law rule would have been applicable as to executory estates; but the principal case involved not an executory estate but a reversionary interest. The common law never required words of inheritance in the creation of reversionary interests[10] since reversions are not granted but remain in the grantor.

The conclusion that a determinable fee was created finds additional support in this case in the doctrine that a trustee receives only such title as is necessary for the purposes of his trust.[11] Although here the grant to the trustees was in terms an absolute fee, it was in the form of a trust.[12] In trusts the *quantum* of estate to be taken by the beneficiary should be determined solely by the grantor's expressed intention.[13] Therefore the reverter clause in this deed should have taken effect to limit the beneficiary's interest to a determinable fee, and since the trustees would then need only a determinable fee, a legal fee simple determinable should result.

H. S. M.

Dower in Ohio in Case of Forced Sale

A cotenant petitions for the partition of certain realty, claiming an undivided one-half interest, and also for reasonable allowance for permanent improvements made by the petitioner's assignor with the other cotenant's consent. The latter's spouse claims right of dower in his interest now held by a bankruptcy trustee and cross-petitions for determination of the value of her estate therein and its allowance to her out of the proceeds of the sale. *Held*: That the sale be made, that the petitioner be allowed one-half of the value of the improvements made, and that cross-petitioner's inchoate dower be valued and paid out of the proceeds. *Russell* v. *Russell*, 137 Ohio St. 153. In making the award of inchoate dower, the Court of

[10] *See* footnote 3, *supra*.

[11] Young v. Bradley, 101 U. S. 782 (1879); 1 Scott, Trusts, pp. 482-487.

[12] That this probably was a passive trust would not alter the result, since there is no Statute of Uses in Ohio.

[13] 1 Scott, Trusts, pp. 664-665.