"Estate for life" is a generic term embracing interests in land of several types. The duration of such an estate may be measured by the life of the tenant himself, by the life of some other person, by the joint lives of a group of persons (i.e., the life of the member of the group who first dies), or by the life of the survivor of a group of persons. In the last two cases the tenant himself may or may not be a member of the group. When the duration of the estate is measured by the life of someone other than the tenant, that person is known as the *cestui que vie* and the estate as one *pur autre vie*. An estate for life may arise by operation of law, as in the case of dower, curtesy, and tenancy in tail after possibility of issue extinct, or it may be created by express limitation or implication in a conveyance or devise. A conveyance creating a life estate may form part of a family settlement, it may be an outright sale, or it may be a commercial lease, reserving rent and differing from an estate for years only in that duration is measured in lives. The incidents of these several types of estate for life are not precisely uniform, but, for most present purposes, they may be considered together.\(^{234}\)

As has been seen, opposition to the alienability of estates in fee simple arose from three sources, the owner's feudal overlord, his tenant, and his heir. As an

estate for life is not an estate of inheritance, the heir could have no serious opposition to its alienation. 235 Tenants of life tenants have only a slight interest. Alienation of a life estate would rarely interfere with the most valuable of the feudal overlord's incidents of tenure, wardship, marriage, and escheat. There was probably little opposition to the alienability of life estates, and it was unnecessary to provide for it by statute. The common law seems always to have recognized the power of a tenant for life to make an inter vivos transfer of his estate. 236 It will be recalled that freehold estates were not transmissible by will at common law 237 and the Statute of Wills of 1540 did not empower the tenant pur autre vie to devise his estate. 238 He could, however, accomplish nearly the same result by making a lease to commence at his death, 239 and power to transmit estates pur autre vie by will was conferred by statute in 1676. 240 Strictly speaking, a life estate was not heritable but, if limited to the tenant and his heirs, or

235 If an estate pur autre vie was limited to a tenant and his heirs, the heir was entitled to it as special occupant after the death of the tenant. Challis, Real Property, 3d ed., §§58 (1911). Such a right is, however, trivial compared with a right to inherit in fee simple or tail. 236 Anonymous, Liber Assissarum, 27 Edw. III, pl. 31 (1553); Utty Dale's Case, Cro. Eliz. 182, 78 Eng. Rep. 489 (1590); 1 Coke, Institutes 41b; 3 Holdsworth, History of English Law, 3d ed., 123 (1923). 237 Pollock & Maitland, History of English Law Before the Time of Edward I, 312-328 (1895); note 8 supra. 238 Stat. 32 Hen. VIII, c. 1 (1540) as explained by Stat. 34 & 35 Hen. VIII, c. 5, §3 (1542); 1 Coke, Institutes 111b (Hargrave's Note No. 141 to 13th ed. 1787). 239 Barwick's Case, 5 Co. Rep. 93b, 94b, 77 Eng. Rep. 199 at 201 (1598). 240 Statute of Frauds, 29 Car. II, c. §12 (1676), explained by Stat. 14 Geo. II, c. 20, §9 (1741). The latter statute provided that, when an estate pur autre vie was not disposed of by will and there was no special occupant (i.e., the estate was limited to the deceased tenant without mention of his heirs), it should be distributed as personal property of the deceased tenant.
to him and the heirs of his body, the heir took upon intestacy as special occupant.\textsuperscript{241}

As in the case of the fee simple, the English common law did not permit the creation of an inalienable life estate. A restraint on alienation by way of prohibition, which would force the life tenant to remain such against his will, was both impossible and void. It was impossible because the life tenant could always destroy his estate by making a tortious conveyance in fee or committing waste.\textsuperscript{242} It has been seen that entailment is essentially the designation of a peculiar course of descent coupled with a prohibition on alienation. Entailment of an estate \textit{pur autre vie} was effective as a designation of the special occupant but wholly ineffective as a prohibition on alienation. The life tenant could bar the entail by the ordinary forms of inter vivos conveyance and possibly by will.\textsuperscript{243} That a prohibition on alienation

\textsuperscript{241} Note 235 supra.


in a conveyance of an estate for life is void is well settled in England \(^{244}\) and is the prevailing view in this country.\(^{245}\)

The position of the English common law as to the validity of a penalty restraint on alienation of a legal estate for life is not so certain. At common law a conveyance by a life tenant of a greater estate than he had forfeited his estate and destroyed reversions and remainders expectant upon it. There is dictum in a fifteenth century opinion that a condition against alienating in fee may be imposed upon a life estate.\(^{246}\) This is no doubt sound because, as has been seen, tortious alienation may always be restrained by penalty. The two grounds upon which the fourteenth and fifteenth century judges ruled that penalty restraints on alienation of estates in fee simple were void, that the statute \textit{Quia Emptores Terrarum} conferred an inseparable incident of alienability upon every estate in fee simple and prohibited a reversion or remainder following such an estate,\(^{247}\) have no application to estates for life. The statute did not apply to life estates and they may, indeed, must, be followed by a reversion or remainder. The stress laid upon the existence of a reversion or remain-


\(^{246}\) Anonymous, Y.B. 10 Hen. VII, Mich., pl. 28 (1494). See notes 242 \textit{supra} and 263 \textit{infra}.

\(^{247}\) Notes 114, 115 \textit{supra}.
dier in the cases holding valid penalty restraints on alienation of estates in fee tail and for years suggests the validity of such restraints on life estates. The reversioner or remainderman whose estate follows a life estate has a greater interest in the personal characteristics of the life tenant than have reversioners and remaindermen whose interests succeed estates tail or long terms of years. Professor John Chipman Gray thought that penalty restraints on alienation of legal estates for life were valid under the English common law but, with one exception, the cases he cited in support of this proposition involved equitable life estates. There are nineteenth century English cases which assume the validity of such a restraint on a legal estate for life. Although the rule as to equitable life estates is probably otherwise, it would seem that the English law permits such


249 RESTRAINTS ON ALIENATION, 2d ed., 72-73 (1895). As Gray pointed out, the ratio decidendi of the first case holding valid a penalty restraint on alienation of an equitable life estate, Lockyer v. Savage, 2 Strange 947, 93 Eng. Rep. 959 (1733), is the analogy to restraints in leases for years. This reasoning is equally applicable to a legal life estate. The one exception is the first case cited in note 250 infra.

250 Craven v. Brady, L.R. 4 Eq. 209 (1867); Blackman v. Fysh, [1892] 3 Ch. 209 (Ct. App.).

251 Re Mair, Williamson v. French, [1909] 2 Ch. 280.
restraints on legal estates only if they benefit the reversion or remainder, and that they are void if solely for the protection of the life tenant himself or of a stranger to the title to the land involved.\(^{252}\)

The American cases tend, like the English, to hold valid a provision in a conveyance creating an estate for life for forfeiture of the estate upon alienation, voluntary or involuntary, although there are a few cases holding such provisions invalid and a few holding, illogically, a provision for forfeiture to someone other than the creator of the estate valid, but one for forfeiture to the creator of the estate void.\(^{253}\) The *Restatement of Property* takes the position that a provision in a conveyance of a life estate for forfeiture upon alienation is valid whether the forfeiture is to the creator of the estate or another.\(^{254}\) So far it reflects settled English law. The *Restatement* goes beyond this, however, by asserting the validity of penalty restraints on alienation of estates for life which are not imposed for the benefit of the reversioner or remainderman. Thus it declares that a life tenant may provide validly in a conveyance of his entire estate that the transferee will forfeit the estate by alienation.\(^{255}\) Such a

\(^{252}\) Sweet, "Restraints on Alienation," 33 L.Q. Rev. 236 at 244 (1917); Bordwell, "Alienability and Perpetuities," 25 Iowa L. Rev. 1 at 11-13 (1938). This conclusion seems inevitable from the principles upon which the cases referred to in notes 247 and 248, supra, are grounded.

\(^{253}\) The cases are collected in Gray, RESTRAINTS ON ALIENATION, 2d ed., 72-89 (1895); Schnebly, "Restraints Upon the Alienation of Property," 6 AMERICAN LAW OF PROPERTY, §26.50 (1952); Manning, "The Development of Restraints on Alienation Since Gray," 48 HARV. L. Rev. 373 at 394-398 (1935); Schnebly, "Restraints Upon the Alienation of Legal Interests," 44 YALE L.J. 961, 1186 at 1207-1211 (1935).

\(^{254}\) PROPERTY RESTATEMENT §409, Illustrations 1, 6 (1944).

\(^{255}\) Id. Illustration 3. Comment a states that the normal objective of a restraint on alienation of an estate for life is the protection of the life tenant against his own indiscretions. It asserts that this is a worthy objective which ought to be carried out in the absence of substantial social objection. This was not the normal objective sought
provision violates the rule implicit in the English cases that a valid restraint upon alienation of a legal estate may be imposed only by the creator of the estate for the benefit of his reversion or of a remainder limited after the estate. Although it does not explicitly so state, the Restatement would appear to consider valid a contract against alienation entered into between a life tenant and a stranger to the title, such as a neighboring proprietor. These extensions of the rules governing the validity of restraints on alienation of legal life estates seem inconsistent in principle with the doctrine of estates upon which our land law is founded. 256

In general, the Michigan statutes recognize legal life estates and accord to them the incidents which they had at common law. From 1847 to 1949 there were some statutory provisions which made important changes in the common law of estates for life, and there are still to be accomplished by such a restraint in the period during which the incidents of legal life estates became fixed. 7 Holdsworth, History of English Law 240-241 (1926). The normal objective in that period was the protection of the reversioner against having his land and buildings injured by an evil or incompetent tenant, and it was the worthiness of this objective which led to decisions that restraints on alienation of life estates were valid. The preface to the second edition of Gray's Restraints on Alienation (1895) is a forceful refutation of the view that "the protection of the life tenant against his own indiscretion" is a "worthy objective." As he points out, the placing of an owner of property of full age and sound mind under a sort of guardianship to ensure that his wrongdoing will injure only others and not himself is likely to weaken his character and harm society. Despite Gray's vigorous objections, the objective of protecting the owner has been recognized as a proper basis for restraints on alienation of interests under trusts. This is no reason for extending such recognition to legal estates. As Mr. Manning has observed, the legal life tenant who is in possession of the land is much more likely to secure credit on the basis of his apparent power of alienation than is the beneficiary under a trust of land in the possession of a trustee. Manning, "The Development of Restraints on Alienation Since Gray," 48 Harv. L. Rev. 373 at 398 (1935).

some provisions which have a bearing on the validity and effect of restraints on alienation of such estates. 257

257 Chapter 62 of the Revised Statutes of 1846 provided as follows:

"Sec. 5. Estates . . . for life shall be denominated estates of freehold; . . ."

"Sec. 6. An estate for the life of a third person, whether limited to heirs or otherwise, shall be deemed a freehold only during the life of the grantee or devisee, but after his death it shall be deemed a chattel real.

"Sec. 17. Successive estates for life shall not be limited unless to persons in being at the creation thereof; and when a remainder shall be limited on more than two (2) successive estates for life, all the life estates subsequent to those of the two (2) persons first entitled thereto, shall be void, and upon the death of these persons, the remainder shall take effect, in the same manner as if no other life estate had been created.

"Sec. 18. No remainder shall be created upon an estate for the life of any other person or persons than the grantee or devisee of such estate, unless such remainder be in fee; nor shall any remainder be created upon such an estate in a term for years, unless it be for the whole residue of the term.

"Sec. 19. When a remainder shall be created upon any such life estate, and more than two (2) persons shall be named as the persons during whose lives the estate shall continue, the remainder shall take effect upon the death of the two (2) persons first named, in the same manner, as if no other lives had been introduced.

"Sec. 21. No estate for life shall be limited as a remainder on a term of years, except to a person in being at the creation of such estate.

"Sec. 24. Subject to the rules established in the preceding sections of this chapter, a freehold estate, as well as a chattel real, may be created to commence at a future day, an estate for life may be created in a term of years, and a remainder limited thereon.

"Sec. 27. A remainder may be limited on a contingency, which, in case it should happen, will operate to abridge or determine the precedent estate; and every such remainder shall be construed a conditional limitation and shall have the same effect as such a limitation would have by law.

"Sec. 29. When a remainder on an estate for life, or for years, shall not be limited on a contingency, defeating or avoiding such precedent estate, it shall be construed as intended to take effect only on the death of the first taker, or the expiration, by lapse of time, of such term of years."—Comp. Laws (1857) §§2589, 2590, 2601, 2602, 2603, 2605, 2608, 2611, 2613; Comp. Laws (1871) §§4072, 4073, 4084, 4085, 4086, 4088, 4091, 4094, 4096; Comp. Laws (1897) §§8787, 8788, 8799, 8800, 8801, 8803, 8806, 8809, 8811; How. Stat. §§5521, 5522, 5533, 5534, 5535, 5537, 5540, 5543, 5545; Comp. Laws (1915) §§11523, 11524, 11535, 11536, 11537, 11539, 11542, 11545, 11547; Comp. Laws (1929) §§12925, 12926, 12937, 12938, 12939, 12941, 12944, 12947, 12949; Mich. Stat. Ann. §§26.5, 26.6, 26.17, 26.18, 26.19, 26.21, 26.24,
"Every single disposal of real estate made in this my testament, is only for the use and benefit of him or her in whose favor it is made, his or her life lasting, and that it is my formal will that neither my real estate nor any parcel thereof, will ever be sold or alienated in whatsoever manner—but that after the decease of those several to which shares or parcels of my real estate have been assigned, the said shares or parcels will remain for the use and benefit of the descendants of him or her to whom a share (sic) has been assigned, their lives lasting, and so on, and in case of demise without posterity, the said share will accrue to the use and benefit of the owner or of the owners being of my relation or descendants, their life lasting, of the next share or shares, and so on as long as any posterity will exist, and in case of extinction to the next heirs."

The named devisees, who were also some of the heirs at law of the testator, conveyed their interests to the plaintiff, who sought a determination that the will was void in toto and that he was entitled to partition. The court decided that the will was designed to set up a perpetual succession of inalienable life estates. Rejecting a suggestion of counsel that the testator's intention could be carried out in part by ruling that the named devisees took estates for life with remainders in fee simple to their heirs, the court held that the entire will was void under the common-law Rule Against Perpetuities, in 26.27, 26.29; Comp. Laws (1948) §§554.5, 554.6, 554.17, 554.18, 554.19, 554.21 554.24, 554.27, 554.29. The effect of these statutes is discussed in detail in Chapter 19, infra. Sections 17, 18 and 19 were repealed by Act 38, P.A. 1949, §2, Mich. Stat. Ann. §26.49 (2); Comp. Laws (1948) §554.52, as to conveyances executed and wills becoming effective after September 23, 1949.

258 2 Mich. 294 (1852), Part Two, notes 39, 536, infra.
force in Michigan before 1847 and since 1949. Consequently the heirs of the testator took the land in fee simple, free of the prohibition on alienation imposed by the will.\textsuperscript{259}

*Hayward v. Kinney* \textsuperscript{260} was a suit to foreclose a mortgage given by Francis H. Strong in November, 1866. In June, 1866, when Francis H. Strong, Joseph T. Strong, Chester W. Strong, and Gertrude J. Cole were tenants in common in fee simple of the land, the last three united in a quit-claim deed to Francis H. Strong,

"during his natural life-time, and his heirs and assigns of his heirs, forever, but not to be conveyed during the life-time of the said Francis H. Strong."

The defendant Kinney, a purchaser on execution sale against Francis H. Strong, contended that the quoted language imposed an effective prohibition on alienation of the life estate in three-quarters of the land conveyed by the deed, so as to make a voluntary conveyance or mortgage by Francis H. Strong ineffective. The court rejected this contention, saying,

"These words, if effectual for any purpose, operate, and were evidently intended, as a condition subsequent. The deed created a life-estate merely in three-fourths of the premises, and the insertion of the words served to

\textsuperscript{259} It may be that such a perpetual succession of life estates should be held void under the ancient common-law rule that a remainder may not be limited to the unborn child of an unborn person, rather than under the more recently developed Rule Against Perpetuities. See Whitby v. Mitchell, L.R. 44 Ch. Div. 85 (1890); 1 Fearne, Contingent Remainders, 10th ed., 251, 565 (Butler's note) (1844); Sir Hugh Cholmley's Case, 2 Co. Rep. 50a, 51b, 76 Eng. Rep. 527 at 530 (1597); Bordwell, "Alienability and Perpetuities," 25 Iowa L. Rev. 1 at 9-22 (1939); Part Two, note 13, infra. This is known variously as the old rule against perpetuities, the rule against double possibilities, and the rule in Whitby v. Mitchell. But see 2 Simes, Law of Future Interests 339-341 (1936). In any event, the result reached in St. Amour v. Rivard seems sound. Simes, *id.*, 428-429.

\textsuperscript{260} 84 Mich. 591, 48 N.W. 170 (1891).
make that an express condition which at common law was implied in every estate for life or years. 2 Bl. Comm. 153. Such a condition, however, defeats the estate to which it is annexed only at the election of him who has a right to enforce it." 261

The decision construes language of prohibition as a condition imposing a penalty restraint of forfeiture on alienation. As the cited passage in Blackstone relates to the common-law rule that a conveyance in fee by a life tenant forfeited his estate, it would seem that the court thought the condition was only against tortious alienation of the fee, not against mere alienation of the life estate itself. 262 If so, the validity of the condition is supported by ancient authority. 263 The case does not, then, decide whether a restraint on alienation of a life estate, by prohibition or penalty, is valid.

_Lariverre v. Rains_ 264 was a suit to quiet title brought by Peter Lariverre and Joseph Lariverre, Jr. In 1883 Julia L. White executed an instrument which was, in effect, a covenant to stand seized, conveying to her husband, Edward, "the use and occupancy as long as he

261 Id. at 599.
262 Note 242 _supra._
263 Note 246 _supra._ At common law a conveyance by a life tenant of a greater estate than he had, by feoffment, fine or recovery, forfeited his estate, destroyed contingent remainders dependent upon it, and complicated the enforcement of reversions and vested remainders. Until 1540, his suffering a common recovery barred even reversions and vested remainders. Stats. 32 Hen. VIII, c. 31 (1540); 14 Eliz., c. 8 (1572); Bordwell, "Alienability and Perpetuities," 24 *Iowa L. Rev._ 1 at 57-58 (1938); 25 *Iowa L. Rev._ 1 at 24 (1939). Such a conveyance by lease and release, bargain and sale, or covenant to stand seized did not have these effects, however, these being deemed "innocent" conveyances which passed only such estates as the conveyor had. As the innocent types of conveyances were invented after 1494 and as our statutes make all types of conveyance innocent (note 242 _supra_) it could be argued that a penalty restraint upon alienation in fee by a life tenant should have no greater validity than one upon alienation of the life estate itself. See 4 Kent, _Commentaries on American Law_ *82-84, *427-428; _Property Restatement_ §124, comment e (1936).
264 112 Mich. 276, 70 N.W. 583 (1897).
shall live, in case he lives with her as long as she shall live, and sees fit to occupy the same as a residence and home" the west half of the tract of land involved. The instrument then conveyed to Joseph Lariverre, Sr., son of the donor and father of the plaintiffs, "the use and occupancy of the east half of (the tract) during his life, providing he sees fit to use and occupy the same so long as a home and residence," and proceeded as follows:

"and by these presents conveys absolutely, subject to the above conditions, all of said (tract of land) to her said grandchildren, Joseph and Peter Lariverre, children of the said Joseph, her son, or to his heirs; it being expressly understood that, if her said son Joseph shall have more children at the time of his death, they shall share and share alike the said property. It is further understood that in case of her death, and the death of her said husband, before the death of her said son Joseph, then he, her said son Joseph, shall have the use and occupancy during his life of (the whole tract) on the terms and conditions above specified, to wit, to be used and occupied by him as a home and residence. It being expressly understood and agreed that the right to use and occupy, as above stated, is intended to be a life interest, and not transferable so far as the said Edward White and Joseph Lariverre, Sr., are concerned."

In 1889 Julia L. White executed a conveyance in fee of the east half of the tract to her son Joseph Lariverre, Sr. and he executed a like conveyance to Maria B. Doyle. In the same year Julia L. White and Edward White executed a conveyance in fee of the west half of the tract to Maria B. Doyle. Maria B. Doyle took possession of the whole tract in 1889 and conveyed it to the defendants in 1890. Julia L. White died while the suit was pending, but Edward White and Joseph Lariverre, Sr., were alive when the case was decided. The court held that the actions of Edward White and Joseph Lariverre,
Sr., in ceasing to occupy the land and attempting to convey to Maria B. Doyle, terminated their life estates and that the plaintiffs, remaindermen, were entitled to immediate possession, notwithstanding the fact that the two life tenants were still alive. The opinion contains no discussion of the validity of restraints on alienation and cites as authority for the result reached only Ryder v. Flanders, a case which has little bearing on the real problems involved.

As it had in Hayward v. Kinney, the court in Lari­verre v. Rains construed language which, taken literally, purported to prohibit alienation, as a provision for forfeiture on alienation. As the provisions of the instrument relative to occupancy were couched in language of limitation, this construction was probably sound. The court did not consider the possible application to that part of the instrument which concerned the west half of the tract of the Michigan statute then in force which invalidated more than two successive life estates. Probably the application of that statute would not have affected the result. The court also failed to consider the statute, which is still in force, providing that when a remainder on an estate for life shall not be limited on a contingency, defeating or avoiding the life estate, it shall be construed as intended to take effect only on the death of the life tenant. If the latter statute applied

265 30 Mich. 336 (1874). This case involved a devise to the testator's widow during the term of her natural life, should she so long remain his widow and unmarried, and then "in either case" to his children. The widow remarried and, after one child had died, joined with some of the children in a conveyance to the other children. All that was decided was that the grantees in this deed owned the whole fee which, as the court pointed out, would be the case whether or not the limitation over on remarriage was valid.

266 Note 260 supra.


to the disposition in Lariverre v. Rains, it would seem that, upon the forfeiture of the estates of Edward White and Joseph Lariverre, Sr., the land would revert to Julia L. White and her heirs until the death of Edward and Joseph, Sr. It may be that the language limiting the remainder to the grandchildren was sufficient to prevent the operation of the statute; that is, to provide that they should take whenever and however the life estates were terminated.

Lariverre v. Rains has been cited as something of a leading case in support of the proposition that penalty restraints on alienation of estates for life are valid. The opinion throws disappointingly little light on the problem. The conveyances by the life tenants were in fee, so the case may stand only for the ancient rule that restraints on tortious alienation are valid. Moreover, the occupancy provisions of the instrument involved seemed to be given more weight by the court in reaching its conclusion than the language prohibiting alienation.

Hamilton v. Wickson was a suit to enjoin an action of ejectment. In 1870 Norman Hamilton leased 160 acres to John and Adah Hamilton for the life of the survivor, reserving rent of a dollar a year. The lease provided,

"And it is expressly understood, declared, and agreed by and between the parties hereto, and these presents are made upon the express condition, that the term hereby created shall not in any case be assignable by the said parties of the second part, or either of them, or by the survivor of them, nor shall the same be taken in execution, or be mortgaged, pledged, or in any way aliened; and that in the event of the said term hereby granted

269 See notes 246 and 263 supra.
270 131 Mich. 71, 90 N.W. 1032 (1902).
and created, or the said demised premises, being assigned, mortgaged, pledged, or in any way aliened, sold, or taken in execution, or the said parties of the second part, or either of them or the survivor of them, becoming bankrupt or insolvent, or in case of the nonperformance of the covenants aforesaid, that then in either or any of such case or cases, the said term or estate hereby created or intended so to be shall immediately cease and determine, and these presents become void, and the said demised premises at once revert to the said party of the first part, his heirs, executors, administrators or assigns, and he or they be thereupon at liberty to enter upon said demised premises, either with or without formal demand for possession thereof, and the same to have again as of his or their forever (sic) estate, notwithstanding the said parties of the second part, or the survivor of them, may still be alive, anything herein contained to the contrary notwithstanding."

Norman Hamilton died in 1874, devising the premises, subject to the lease, to the defendants _pur autre vie_, with contingent remainder to the sons of John Hamilton living at the death of the survivor of John and Adah Hamilton. In 1888 John and Adah Hamilton executed a deed purporting to convey a 50-foot strip of the land to a railroad. John Hamilton died in 1891, and the defendants commenced the action of ejectment sought to be enjoined against Adah Hamilton, claiming that the life estate was forfeited by breach of a covenant to repair and of the condition against alienation. The court reversed a decree which enjoined prosecution of the action of ejectment, saying, without other discussion or citation of authority on the restraint on alienation problem,

"It seems not to be contested that, if the lease is a subsisting, binding agreement, its covenants have been brok-
en in such manner as to entitle the remainder-men to re-enter." 271

The decision in Hamilton v. Wickson probably supports the proposition that a provision in a conveyance of a life estate that the estate shall be forfeited to the reversioner upon alienation by the life tenant is valid. Yet in it, as in the earlier cases, the alienation by the life tenants was a conveyance in fee. 272 Moreover, the effect of the decision is much weakened by the fact that it is based in part upon breach of the covenant to repair. In view of the facts that Norman and John Hamilton were brothers and that the life lease was, in some sense, a family settlement, it seems doubtful that the condition against alienation should be construed to forfeit the entire 160 acres upon alienation of a 50-foot strip. 273

Heinze v. Heinze 274 was an action of assumpsit for use and occupation. The defendant, in consideration of one dollar, gave his mother a life lease of land providing that the lessee should not sublet without the written consent of the lessor. The defendant remained in possession and the mother's administrator brought this action after her death. The court, without discussion of the validity of the provision against subletting, held that consent in writing was not required for a subletting to the lessor himself.

271 Id. at 76. The plaintiffs, Adah Hamilton, widow of John, and their children, relied primarily on a theory of resulting trust arising from the fact that John had paid the consideration for the original conveyance in fee to Norman, made prior to 1860. The court rejected this theory on the grounds the acceptance of the lease estopped the lessees from asserting title in fee and that the Michigan statutes have abolished resulting trusts. Rev. Stat. 1846, c. 63, §7; Comp. Laws (1857) §2637; Comp. Laws (1871) §4120; How. Stat. §§5569; Comp. Laws (1897) §8835; Comp. Laws (1915) §11571; Comp. Laws (1929) §12973; Mich. Stat. Ann. §26.57; Comp. Laws (1948) §555.7.

272 See notes 246 and 263 supra.

273 PROPERTY RESTATEMENT §409, comment g.

Hess v. Haas 275 was a suit to enjoin assertion of a forfeiture of a life estate. In September, 1913, James Hess executed a lease of a farm to the plaintiff for the term of her life, to commence at his death. The lease contained a covenant against assignment, transfer, or subletting without the written assent of the lessor, and a provision for termination and re-entry by the lessor upon breach of any covenant. James Hess married the plaintiff in November 1913, divorced her in 1917, and died in 1922, devising the land to the defendants. The plaintiff leased the farm to one Laskey for a term of three years, and the defendants declared a forfeiture. The circuit court entered a decree for the plaintiff on the ground that a covenant against alienation of a life estate is void as an unreasonable restraint on alienation. This decree was affirmed on the ground that the covenant against alienation, which was part of a printed form of lease, had been inserted by mutual mistake. Three justices dissented, asserting that Lariverre v. Rains 276 had held that forfeiture restraints upon assignment or subletting, inserted for the protection of the lessor, were valid in leases for life to the same extent as in leases for years. The majority opinion does not categorically deny this proposition but, by pointing out that the decision in Lariverre v. Rains was based largely upon the occupancy limitations involved in that case, throws some doubt upon the assertion of the dissenting justices.

Kemp v. Sutton 277 was a suit to construe a will devising

276 Note 264 supra. In Braun v. Klug, 335 Mich. 691 at 695, 57 N.W. (2d) 299 (1953), note 162 supra, there is dictum to the effect that a restriction on alienation is not repugnant to the grant of a life estate. The case held that a covenant in a conveyance in fee simple against alienation to anyone except the grantors and their heirs was void.
land to the testator's widow and four sons and the survivors and survivor of them during their natural lives, remainder upon the death of the survivor to the City of Sault Ste. Marie in fee simple. The will provided,

"I further order and direct as a condition precedent to the enjoyment, devise and ownership and use of the life estates and interests herein devised, that each and all of the said devisees above named are absolutely prohibited, from in any wise selling, mortgaging or incumbering, in any manner whatever, any part or portion of the said property above devised to them and each of them, and upon any violation of the same by any or all of the said devisees as to the same in this item set out; then I direct that each devisee or devisees so violating this item shall forfeit the share and portion herein devised to them and the same shall revert to, and become the property of the other devisees above mentioned in the shares and under the terms herein set out in this my will."

The court held that the will gave the individual devisees a single legal joint life estate for the life of the survivor,278 and that this disposition did not violate a statute which was in force from 1847 to 1949 providing that the absolute power of alienation should not be suspended by a limitation, condition, or future estate for longer than two lives in being.279 The opinion does not mention the

278 This seems irreconcilable with other decisions that a conveyance to several persons as joint tenants and to the survivor creates a joint estate for the life of the first to die, with remainder to the survivor. Note 167 supra.

279 Chapter 62 of the Revised Statutes of 1846 provided,

"Sec. 14. Every future estate shall be void in its creation, which shall suspend the absolute power of alienation for a longer period than is prescribed in this chapter; such power of alienation is suspended when there are no persons in being, by whom an absolute fee in possession can be conveyed.

"Sec. 15. The absolute power of alienation shall not be suspended by any limitation or condition whatever, for a longer period than during the continuance of two (2) lives in being at the creation of the
Michigan statutes then in force which prohibited more than two successive life estates and does not discuss the validity of the quoted provision for forfeiture upon alienation other than to say that all the life tenants could unite with the city to convey a fee or release to a purchaser from the city. The opinion has an important bearing on the validity of restraints on alienation imposed between 1847 and 1949, however, in that it indicates that such a restraint was not affected by the mentioned statute prohibiting suspension of the absolute power of alienation so long as persons in being could unite to convey a fee simple.

The Michigan law of restraints on alienation of estates for life is not so certain as that relating to restraints on estates in fee simple. The denial in Mandlebaum v. McDonell of the validity of prohibitions on alienation, which would operate to force an owner to remain such against his will, probably extends to all legal estates. None of the cases involving restraints on life estates contains a thorough discussion of the problem, but it is probable that our law as to penalty restraints is the same as the English, that is, a provision for forfeiture on alienation, except in the single case mentioned in the next section.

"Sec. 16. A contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first (1st) remainder is limited shall die under the age of twenty-one (21) years, or upon any other contingency by which the estate of such persons may be determined before they attain their full age."—Comp. Laws (1857) §§2598, 2599, 2600; Comp. Laws (1871) §§4081, 4082, 4083; Comp. Laws (1897) §§8796, 8797, 8798; How. Stat. §§5590, 5591, 5592; Comp. Laws (1915) §§11532, 11533, 11534; Comp. Laws (1929) §§12934, 12935, 12936; Mich. Stat. Ann. §§26.14, 26.15, 26.16; Comp. Laws (1948) §§554.14, 554.15, 554.16; repealed as to conveyance executed and wills becoming effective after September 23, 1949 by Act 38, P.A. 1949, §2; Mich. Stat. Ann. §26.49(2); Comp. Laws (1948) §554.52. These statutes are discussed in detail in Chapters 18, 20, and 21, infra.


281 29 Mich. 78 at 83-91 (1874).
er the forfeiture is to the creator of the estate or another. As to inter vivos conveyances, the statute avoiding conditions which are merely nominal and evince no intention of actual and substantial benefit to the party in whose favor they are to be performed must be borne in mind.\textsuperscript{282} Any restraint in a conveyance creating a life estate is valid whether there is certainly nothing in the Michigan cases to suggest that a restraint imposed for the benefit of anyone other than a reversioner or remainderman would be enforced.

The Michigan statutes empower the circuit courts in chancery to direct the sale of land in fee simple upon petition by a legal life tenant and a showing that the rights of the interested parties would otherwise be jeopardized.\textsuperscript{283} The statute itself provides that,

“No sale or conveyance of any kind shall be made of any property contrary to any specific provisions in regard thereto contained in the deed of conveyance, or in the will under which the petitioner holds the said property.”\textsuperscript{284}

Accordingly, it would seem that a prohibition on the life tenant’s compelling a sale of the remainder would be valid. The validity of a provision in a conveyance creating a life estate for forfeiture of his estate in the event of the life tenant’s filing a petition under the statute remains undecided.\textsuperscript{285}

\textsuperscript{282} Comp. Laws (1948) §554.46, notes 143, 145 supra.

\textsuperscript{283} Act §14, P.A. 1915, c. 19, §§62 to 70; Comp. Laws (1915) §§12716 to 12724; Comp. Laws (1929) §§14404 to 14412; Mich. Stat. Ann. §§27.1188 to 27.1196; Comp. Laws (1948) §§619.62 to 619.70. This is a reenactment of Act 233, P.A. 1887, as amended, Comp. Laws (1897) §§993 to 92. See Property Restatement §124, comment i; §179, note (1936).

\textsuperscript{284} Sec. 70.

\textsuperscript{285} See Property Restatement, Div. IV, Pt. II, Introductory Note (1944); Cf. id., §§428, 437.