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Comments

JURY TRIAL IN MISDEMEANOR CASES AND THE NEW MAGISTRATE COURTS

I

In Missouri justices of the peace have original jurisdiction concurrent with the circuit courts in cases of misdemeanor.¹ If the prosecution is commenced before a justice the statutes provide that jury trial may be demanded,² and that

1. Mo. Rev. Stat. (1939) § 3804.

2. *Id.* § 3825.

the jury shall consist of six men unless a smaller number is agreed upon.³ Although there is no constitutional right to jury trial in the case of petty offenses,⁴ most misdemeanors are more than petty offenses and are crimes within the meaning of constitutional provisions for trial by jury.⁵ While twelve men are necessary to constitute a jury under a constitutional provision guaranteeing the right to trial by jury generally,⁶ both the old and the new Missouri constitutions provide that in courts not of record the jury may consist of less than twelve citizens if so prescribed by law.⁷ As the court of the justice of the peace is not a court of record,⁸ the statutory provision relative to number of jurors does not violate the constitutional right to trial by jury. However, it has been declared by the United States Supreme Court that one of the essentials of jury trial under the United States Constitution is that the jury should be presided over by a judge empowered to instruct as to the law.⁹ This doctrine has had some support in the state courts in connection with jury trial provisions in state constitutions,¹⁰ though of course no provision of the United States Constitution guarantees the right of jury trial in the state courts and the decisions of the federal courts relative to what constitutes trial by jury are not binding on the state courts in construing state constitutions.¹¹ As the justice of the peace is not empowered to instruct the jury in Missouri,¹² it appears that it may be impossible to obtain a constitutional trial by jury in a trial before a justice of the peace. However, no Missouri case is found which touches upon this particular point.

3. MO. REV. STAT. (1939) § 3826. See also *id.* §§ 6794, 6909, 7131 providing for trial by jury as before justices of the peace for violations of ordinances prosecuted before the municipal judge, police judge or mayor in cities of the second, third and fourth classes.

4. *District of Columbia v. Clawans*, 300 U. S. 617, 57 Sup. Ct. 660 (1937), noted in 3 MO. L. REV. 63, where Missouri cases in accord are cited.

5. *District of Columbia v. Colts*, 282 U. S. 63, 51 Sup. Ct. 52 (1930) (reckless driving); see *State v. Kingsley*, 108 Mo. 135, 18 S. W. 994 (1891) (defrauding inn-keeper). *Cf.* U. S. CONST., art. III, § 2 and 6th Am., with MO. CONST. 1875, art. II §§ 22, 28 and MO. CONST. 1945, art. I, §§ 18, 22.

6. *Patton v. United States*, 281 U. S. 276, 50 Sup. Ct. 253 (1930); *State v. Mansfield*, 41 Mo. 470 (1867); *Bank of Missouri v. Anderson*, 1 Mo. 244 (1822); *State v. Sanders*, 243 S. W. 771 (Mo. 1922); see *State v. Hamey*, 168 Mo. 167, 67 S. W. 620 (1902).

7. MO. CONST. 1875, art. II, § 28; MO. CONST. 1945, art. I, § 22. See *State v. Mansfield*, 41 Mo. 470 (1867) decided under the Constitution of 1865 which contained no such provision; *cf.* *Vaughn v. Scade*, 30 Mo. 600 (1860).

8. See MO. REV. STAT. (1939) § 1990.

9. *Capital Traction Co. v. Hof*, 174 U. S. 1, 19 Sup. Ct. 580 (1899).

10. See *Mascall v. Comm'rs of Drainage District*, 122 Ill. 620, 14 N. E. 47 (1887); *Smith v. Atlantic and Great Western R. R.*, 25 Ohio St. 91 (1874). *Cf.* *White v. White*, 108 Tex. 570, 196 S. W. 508 (1917), where the court excepts trials before justices of the peace from this requirement.

11. *Southern Ry. v. Durham*, 266 U. S. 178, 45 Sup. Ct. 51 (1924); *Alford v. State ex rel. Attorney General*, 170 Ala. 178, 54 So. 213 (1910); *Commonwealth v. Whitney*, 108 Mass. 5 (1871); *State v. Bates*, 14 Utah 293, 47 Pac. 78 (1896).

Even though an accused may not obtain a constitutional trial by jury before a justice of the peace, it is possible that the right may be satisfied on appeal to the circuit court where the trial is *de novo*¹³ by a twelve man jury instructed as to the law by the circuit judge. It has been so held in Missouri in case of conviction by a city magistrate for a municipal offense when the statute gives an unobstructed right to appeal to circuit court and obtain a full jury trial there.¹⁴ Decisions in other states are to the same effect.¹⁵ The United States Supreme Court holds that the Seventh Amendment relative to the right of jury trial in civil cases may be satisfied by an appeal with trial *de novo* by a constitutional jury,¹⁶ but that in criminal cases the more mandatory provisions of Article III, Section 2 of the Constitution and of the Sixth Amendment require that a jury trial be afforded in the first trial.¹⁷ Of course here again neither the United States Constitution nor decisions thereunder control the state courts acting under their own constitutions.¹⁸

II

Important problems will arise in this connection under the Missouri constitution of 1945. Unless otherwise provided by law the practice, procedure, administration and jurisdiction of magistrate courts and appeals therefrom shall be as provided by law for justices of the peace at the time of the adoption of the constitution.¹⁹ No reason is apparent why magistrates should not have concurrent or even exclusive jurisdiction in trial of misdemeanors. The constitution does not make the magistrate courts a court of record,²⁰ though the legislature could probably do so.²¹ As long as the magistrate court is not a court of record, it would be proper to apply the present justice of the peace procedure to trials in the magistrate court and to regard the trial *de novo* in the circuit court as affording the real constitutional jury trial in which the judge is empowered to instruct the jury as to the law.²² There seems to be no legal reason why magistrates cannot simply

12. State *ex rel.* Schonhorst v. Cline, 85 Mo. App. 628 (1900); KELLEY, JUSTICE PRACTICE (5th ed. 1913) § 116.

13. MO. REV. STAT. (1939) §§ 3842, 3843; State v. Gowing, 27 Mo. App. 389 (1887); see State v. Heinze, 45 Mo. App. 403, 411 (1891).

14. City of Marshall v. Standard, 24 Mo. App. 192 (1887).

15. Alford v. State, 170 Ala. 178, 54 So. 213 (1910); State v. Brennan's Liquors, 25 Conn. 277 (1856); State v. Beneke, 9 Iowa 203 (1859); State v. Craig, 80 Me. 85, 13 Atl. 129 (1888); Commonwealth v. Whitney, 108 Mass. 5 (1871); Lincoln v. Smith, 27 Vt. 328 (1855).

16. Capital Traction Co. v. Hof, 174 U. S. 1, 19 Sup. Ct. 580 (1899). Accord: State v. Gerry, 68 N. H. 495, 38 Atl. 272 (1896).

17. Callan v. Wilson, 127 U. S. 540, 8 Sup. Ct. 1301 (1888).

18. See notes 11, 15 *supra*.

19. MO. CONST. 1945, art. V, § 20.

20. The only court which is expressly made a court of record by the new constitution is the probate court. MO. CONST. 1945, art. V, § 17.

21. See MO. REV. STAT. (1939) § 1990.

22. See notes 7, 14-18 *supra*.

step into the shoes of justices of the peace and try misdemeanor cases under the same procedure and subject to the same manner of appeal as is now applicable to justices of the peace.

The question remains, however, as to whether it is desirable to continue the present practice. While appeal with trial *de novo* is probably necessary on constitutional grounds under the justice of the peace organization there are serious objections to the procedure. Delay, expense, possible congestion of appeals in circuit court are important considerations. The fact that one tried for a misdemeanor in the inferior court has a chance to be set free by either of two juries, while in a felony charge or in misdemeanor proceedings initiated in circuit court the verdict of a single jury determines the matter, is somewhat of an absurdity. The trial *de novo* practice tends to degrade the court in which the action is first tried and to result in cases being poorly considered there. The new constitution contemplates that magistrates shall be some more than justices of the peace under a different name. While the old constitution and the existing statutes do not speak of justice courts,²³ the new constitution mentions magistrate courts in five different sections.²⁴ The higher qualifications for office,²⁵ coupled with a great reduction of numbers,²⁶ and the grant of powers of the circuit judge in chambers when the latter is absent from the county²⁷ also clearly indicate this viewpoint.

For the most part appeal with trial by jury may be dispensed with under the new constitution. With the exception noted in the next paragraph, magistrates are required to be licensed to practice law in Missouri,²⁸ and thus are legally competent to instruct juries. They could be empowered by statute to do so. As long as their courts are not made courts of record there could be a constitutional trial by a six man jury.²⁹ This may be appropriate when the charge is no more than a misdemeanor, though a twelve man jury could well be provided by statute and indeed this would be necessary if the legislature should see fit to make the magistrate court a court of record. When constitutional jury trial is fully provided in the magistrate court, appeals therefrom in misdemeanor cases should be on questions of law only, just as are appeals from circuit court in criminal cases. Appeals from magistrate courts could be either to the circuit court or to the court of appeals.³⁰ These are appropriate questions of policy for the general assembly to determine and it is clearly given this power by the constitution.³¹ These particular matters do not come within the rule-making power of the supreme court;

23. MO. CONST. 1875, art. VI, §§ 23, 37. Cf. MO. REV. STAT. (1939) § 2568.

24. MO. CONST. 1945, art. V, §§ 1, 18, 19, 20, 21.

25. *Id.*, art. V § 25.

26. *Id.*, art. V, § 18.

27. *Id.* art. V, § 20.

28. *Id.*, art. V, § 25.

29. *Id.*, art. I, § 22.

30. *Id.*, art. V, §§ 13, 14.

31. *Id.*, art. V, §§ 20, 21.

indeed it is not clear that the supreme court may make any rules of practice and procedure for magistrate courts.³²

However, in fixing the qualifications for magistrates the new constitution provides that persons who are now justices of the peace are eligible for the office of magistrate without being licensed to practice law.³³ Furthermore, probate judges—and in counties of less than 30,000 they are judges of the magistrate courts—are eligible to succeed themselves without being so licensed.³⁴ This interjects a complication into the problem because for many years there may be some judges of magistrate courts who are not legally competent to instruct juries. As to trials held in their courts it would be necessary to retain the trial *de novo* appeal if constitutional jury trial requires the presence of a person empowered to instruct upon the law. At any rate it is desirable that the trial *de novo* appeal be retained in the case of such magistrates and for the sake of uniformity it is arguable that the present procedure should be retained in the case of all magistrates until such time as laymen are no longer eligible for the office of magistrate.

It would seem regrettable, however, to refuse most of the loaf simply because the whole loaf is not yet obtainable. Uniformity should not be made a fetish; indeed the Judiciary Article of the new constitution itself departs from strict uniformity in some cases.³⁵ Different provisions for securing juries dependent upon the size of the county have long existed in this state.³⁶ There is reasonable ground for differentiating between jury trial procedure before magistrates who are and who are not licensed to practice law, and between the scope and manner of appeal from the decisions of these respective classes of magistrates. This is a reasonable classification and should not run afoul of the constitutional provision³⁷ regarding local or special laws.³⁸ While as a temporary expedient the old practice should be retained as to trials before lay magistrates, the more efficient and dignified procedure outlined above should be provided in the case of magistrates who are licensed to practice law.

32. *Id.*, art. V, §§ 20, 21; *Cf. id.* § 5.

33. *Id.*, art. V, § 25.

34. *Ibid.*

35. *Id.*, art. V, §§ 18, 20, 29.

36. MO. REV. STAT. (1939) §§ 729-846. See *Hicks v. Simonsen*, 270 S. W. 318 (Mo. 1924); *State on Inf. Pros. Att'y v. Beckman*, 185 S. W. (2d) 810 (Mo. 1945). *Cf. State ex rel. Kinsey v. Messerly*, 198 Mo. 351, 95 S. W. 913 (1906); *Hays v. C. C. and H. Min. & Mill. Co.*, 227 Mo. 288, 126 S. W. 1051 (1910).

37. MO. CONST. 1945, art III § 40 (4), (30).

38. *Cf. Squire v. Bates*, 132 Ohio St. 161, 5 N. E. (2d) 690 (1936), holding that a law requiring appeal from probate court to go to common pleas court if the probate judge did not possess qualification of a common pleas judge, and to court of appeals if he did, was in violation of constitutional provision requiring laws of general nature to have uniform operation. The Missouri constitution contains no general requirement of this nature. *Cf. Ensworth v. Albin*, 46 Mo. 450 (1870); *State ex rel. Summers v. Hamilton*, 312 Mo. 157, 279 S. W. 33 (1925); note 37 *supra*.

Similar problems exist with regard to trials of civil cases in magistrate court and appeals from those cases. With regard to the manner of appeal and the court to which the appeal is taken there are like problems in connection with appeals from probate courts. These problems involve fundamental questions as to how the general assembly should implement the judicial framework which the new constitution has provided.

T. E. A.

RESERVATIONS IN CONVEYANCES IN FAVOR OF THIRD PERSONS

When the word reservation first appeared in conveyancing it was used only with reference to interests such as rents and other incidents which, under the feudal system, peculiarly grew out of the relationship of tenure.¹ Since these feudal incidents were in favor of the grantor, the word "reserve" as used in conveyancing has come from long usage and without further analysis to be held by the courts as being so restricted even though it thwarted the intention of the grantor, as where he has attempted to reserve, in a conveyance of the fee to B, an interest in favor of a third person.

Perhaps in most instances in conveyancing, technical words have lost their former strict interpretation in favor of our present general rules of construction to effectuate the intention of the grantor and to uphold deeds if possible. For example, where A conveys the fee to B and A wishes to retain an easement over the land conveyed, courts will manipulate words of exception or reservation in such a way as to enable the result intended to be achieved.² In an earlier period of

1. CO. LITT. 46b. Coke quotes the following from Littleton: "And if the lessor in such case reserve to him a yearly rent upon such lease, he may chuse for to distraine for the rent, or else he may have an action of debt for the arrearages." 47a (d): ". . . It is further to be observed, that the lessor cannot reserve to any other but to himself, for Littleton saith, *reserve to himselfe.*" 143b (r): "Note, it is a maxime in law, that the rent must be reserved to him from whom the state of the land moveth, and not to a stranger." In 1 SHEP. TOUCH. 80, it is said: "In every good reservation these things must always concur. 1. It must be by apt words. 2. It must be of some other thing issuing, or coming out of the thing granted, and not a part of the thing itself, nor of some thing issuing out of another thing. 3. It must be of such a thing whereunto the grantor may have resort to distrain. 4. *It must be made to one of the grantors and not to a stranger to the deed.*" (Italics the writer's) At 81: "And if the reservation be of the rent to a stranger that is no party to the deed, and to him only, this reservation is void."

2. TIFFANY, REAL PROPERTY (2d ed. 1920) § 436; (3d ed. 1939) §§ 972-973, citing many cases. The expression reserve or reservation has been used in an untechnical sense in various connections other than in the creation of easements and profits, e.g., retaining a power of disposition, providing for the right to repurchase, retaining the right to recover damages for past injuries to property conveyed, and in other stipulations in behalf of the grantor. Citing many cases in support, Tiffany says: "As above stated, in construing language creating, or attempting to create, rights in the land granted in favor of the grantor, the courts ignore the terms used, such as 'except' and 'reserve,' and ordinarily consider it to constitute an exception

conveyancing where estates given in the granting clause and in the habendum of a deed were repugnant the granting clause controlled. Today the widely accepted rule is that in such cases the intention gathered from the four corners of the deed will be given effect, although in so doing the older rules of construction will be violated.³ But as soon as the same grantor attempts to carve out of the conveyance to B an interest in favor of C by "reserving" an interest to C, there is a reversion to the feudal concept that a reservation may only be to the grantor.

The question comes up in two classes of cases: (1) Where the grantor attempts to reserve an easement in favor of C out of his conveyance of the fee to B; and (2) where the grantor attempts to reserve out of a conveyance to B a life estate in favor of C. Where the easement in favor of a third person is created by reservation in a will devising the land to B, the courts have only looked for a clear manifestation of the devisor's intention to create the easement and to subject one parcel to a restriction in its use for the benefit of the other, and whether the other parcel belongs at the time to the testator or to a third person.⁴ To be sure there could be no new interest created in the devisor under his will, hence the word "reservation" loses its limited meaning as a word of art. Relying partly on *Whitelaw v. Rodney*,⁵ which involved these facts, and partly on a theory of estoppel, the court in *Litchfield v. Boogher*⁶ upheld as a grant, in a conveyance of certain lots, easements reserved for use of third persons who owned other lots.⁷ This decision represents only the occasional holding in which words of reservation have been treated as the equivalent of words of grant in order that the intention of

or a reservation, according to the nature of the rights sought to be created. Accordingly, applying what seems the proper distinction between an exception and a reservation, language which seeks to create rights in favor of the grantor in a certain part of the land will be regarded as constituting a reservation or an exception, accordingly as an easement in such part is created, or the ownership of such part is retained." For the best analysis of what actually happens in a legal sense whether designated an exception or a reservation, see Bigelow and Madden, *Exception and Reservation of Easements* (1924) 38 HARV. L. REV. 180.

3. *Utter v. Sidman*, 170 Mo. 284, 70 S. W. 702 (1902); *Miller v. Dunn*, 184 Mo. 318, 83 S. W. 436 (1904); and see *Triplett v. Triplett*, 332 Mo. 870, 60 S. W. (2d) 13 (1933). Many cases are annotated in (1933) 84 A. L. R. 1054; (1937) 111 A. L. R. 1078; 16 AM. JUR. 615.

4. *Whitelaw v. Rodney*, 212 Mo. 540, 549, 111 S. W. 560, 562 (1908). The will devised property to wife and brother in severalty creating cross easements in favor of each other over land devised to each in order that they might have easy access to the rear of their respective properties. The court said: "All that is necessary to create an easement of the kind under consideration 'is a clear manifestation of the intention of the person who is the source of title to subject one parcel of land to a restriction in its use for the benefit of another, whether that other belongs at the time to himself or to third persons, and sufficient language to make that restriction perpetual.'"

5. 212 Mo. 540, 111 S. W. 560 (1908).

6. 238 Mo. 472, 142 S. W. 302 (1911).

7. The court said "Under these facts it is difficult to see how the private alley could have been more effectually created by grant or reservation than was done in this case.", *id.* at 479, 142 S. W. 304.

the grantor may be given effect.⁸ The usual holding or dictum is to the effect that an easement cannot be created in this manner for the reason that a reservation cannot be made in favor of a third person who is a "stranger to the deed."⁹

In the other class of cases where the words of reservation are employed to create a less estate than that conveyed, as when one conveys an estate in fee to B and reserves to a third person an estate for life, the courts are far more strict in confining the reservation to its historically limited scope. Contrasted with the easement cases or with the cases where the conveyance is by devise, there is lacking in emphasis the rule of construction which attempts to effectuate the intention of the grantor. Of course, what the grantor should have done was to convey a life estate to the third person, with remainder in fee simple to B. Furthermore, to ignore completely the intention of the grantor, the courts often hold that what actually resulted was an exception of a life estate in favor of himself for the life of the third person named in the conveyance. He could then convey this interest to the third person and accomplish by means of two conveyances what he thought he was accomplishing in the one.¹⁰ But seldom does the question arise until the grantor is dead.

In *Lemon v. Lemon*,¹¹ the grantor attempted to reserve from the conveyance of the fee a life estate to himself and wife. In disposing of the argument that the intention of the grantor was clearly manifest to reserve an estate to the wife for her life, the court said: "Undoubtedly, this is true, but the difficulty with this position is that under the law of this state lands and interests in them cannot be granted merely by intent, absent a grant in writing." But this is a nonsequitur. There was a writing in which this interest is attempted to be created. The result

8. *Gibbons v. Ebding*, 70 Ohio St. 298, 71 N. E. 720 (1904).

9. *Jackson v. Snodgrass*, 140 Ala. 365, 37 So. 246 (1904); *Herbert v. Pue*, 72 Md. 307, 20 Atl. 182 (1890); *Murphy v. Lee*, 144 Mass. 371, 11 N. E. 550 (1887); *Haverhill Sav. Bank v. Griffin*, 184 Mass. 419, 68 N. E. 839 (1903); *Beardslee v. New Berlin L. & P. Co.*, 207 N. Y. 34, 100 N. E. 434 (1912); *Brace v. Van Eps*, 21 S. D. 65, 109 N. W. 147 (1906). Additional authorities are cited in 4 *TIFFANY, REAL PROPERTY* (3d ed. 1939) 51. Where the easement in favor of a third person named in the deed of land to grantee was already in existence, the reservation in the subsequent conveyance could not affect or lessen the interest of the third person to this previously created easement. It may be considered as an exception. See *Schmidt v. City of Tipton*, 89 S. W. (2d) 569 (Mo. App. 1936).

10. Occasionally a reservation or exception of a life estate in favor of the other spouse has been effected by regarding the provision as a covenant to stand seized. See cases annotated in (1940) 129 A. L. R. 310, 315. It has been given effect as an agreement by the grantee, enforceable in equity, to permit the beneficial enjoyment of the property during the life of the spouse in whose favor the reservation or exception was made. *Eysaman v. Eysaman*, 24 Hun (N. Y.) 430 (1881).

11. 273 Mo. 484, 497, 201 S. W. 103, 107 (1918). The early case of *Logan's Adm'r v. Caldwell*, 23 Mo. 372 (1856).

of the decision is that a life estate was excepted by the language of reservation to the grantor for the life of his wife. His intention was anything else than this.¹²

This result, while followed in *Meador v. Ward*,¹³ was not without challenge from one member of the court. In answer to the attempt of counsel for defendant to distinguish between the word "reserved" as used in the deed, and the word "grant" or "convey," where the husband intended to convey the life estate to his widow, the dissenting judge stated that this "was sufficient for all practical purposes, to give and convey to her the life estate in that part of the land which belonged to the husband as completely as if the words 'grant' and 'convey' had been used therein."

Other courts have reasoned that the wife, having an inchoate interest by way of dower, homestead, or as statutory heir, has a sufficient basis, when coupled with the owner's title, to sustain the reservation or exception in her favor.¹⁴ Still other courts have given effect to the manifest intention to effect a reservation or exception for life in favor of the owner's spouse and have subordinated the feudal concept.¹⁵

It is desirable that stare decisis prevail where otherwise instability would result. But can it be said that there is a clear general precedent on this question when the easement and life interests are treated differently by our court? Assuming sufficient precedent to cause the attempted creation of a life interest to the third person to result in a life estate in the grantor *per autre vie*, how serious would be the frank acknowledgment that former precedent based on feudal law should no longer control? It certainly would not cause confusion to the few conveyancers who are acquainted with the few decisions in this state on the point, as they know to avoid the use of the term. To those acquainted with the problem it is a word to shun in this connection. It would be a most unusual case where the grantor would wish to retain an interest measured by the life of another and, in case he did, more definite language would be used. Even the most astute conveyancer would not trust to the use of words which, on their face, purport to convey this life interest to another, in case the grantor expected to retain this interest for himself. The only effect of adhering to the precedent is to produce results known to very few and intended by no one in this period of property law.

12. The court held that on the grantor's death there was left residual in his estate an estate *per autre vie* which interest passed to his heirs, if he died intestate, or to his specific or residuary devisees if he died testate, subject to the widow's dower. See *Logan's Adm'r v. Caldwell*, 23 Mo. 372 (1856).

13. 303 Mo. 176, 191, 260 S. W. 106, 110 (1924).

14. *Board of Missions of M. E. Church, South v. Mayo*, 81 F (2d) 449 (C. C. A. 6th, 1936); *Saunders v. Saunders*, 373 Ill. 302, 26 N. E. (2d) 126 (1940); *Derham v. Hovey*, 195 Mich. 243; 161 N. W. 883 (1917); *Engel v. Ladewig*, 153 Mich. 18, 116 N. W. 550 (1908).

15. *Boyer v. Murphy*, 202 Cal. 23, 259 Pac. 38 (1927); *Hall v. Meade*, 244 Ky. 718, 51 S. W. (2d) 974 (1932).

Compared to this construction is that found in *Petty v. Griffith*,¹⁶ where the owner, Lucina B. Franklin, in conveying land added after the description this paragraph: "The intention of grantor herein being to convey to the said Belle Ford Griffith, grantee herein, a life estate only, and at her death to revert to G. M. Beal of Fremont County, Iowa, and his legal heirs." The court found the intention to be "perfectly obvious" and that the grantor did not intend to use "revert" in its technical sense. The court further stated that "To her it was a word of conveyance or her way of saying she intended the title to the property to go to Beal if he survived Belle Ford Griffith and then to his heirs." In an earlier part of the same opinion, the court noted that to those skilled in conveyancing the word revert "usually means that the instrument contains a clause so limiting the estate conveyed that there is a possibility of its terminating and reverting to the grantor" The court observed that it usually refers to a reversionary interest, a defeasible fee simple estate, and that no interest could pass on a theory of reservation or exception due to the theoretically restricted meaning of those words. Therefore, the intention of the grantor had to control.

Why should not the same analysis be made and applied whether the word used be "reserve" or "revert." The latter case shows the present direction in the matter of interpretation of words used in conveyancing.

G. A. M.

16. 165 S. W. (2d) 412, 414, 416 (Mo. 1942).