"POPE" OF "ROME" ON THE "TIBER."

On 13th May, 1664, the Colonial authorities of Maryland issued to Francis Pope a patent for a tract of land of 400 acres situated on "Tiber" Creek which he named "Rome." This tract fell within the lines of the present City of Washington. The Capitol is situated on or near it. Mr. Pope evidently had a desire to be the "Pope" of "Rome" on the "Tiber."[1]

J. Fairfax McLaughlin in *The United States Catholic Historical Magazine,* for 1887, p. 406, gives the date of the patent as June 5, 1663, saying: "Francis Pope once owned the land where the Capitol stands. His farm extended from Capitol Hill over to the eastern branch of the Potomac. The patent, as I remembered it, runs thus: 'June 5, 1663, Laid out for Francis Pope, of this province, gentleman, a parcel of land called Rome, lying on the east side of the Anacosti River and running north 200 perches to the mouth of a bay or inlet called Tiber.'

"Francis Pope, the patentee of 1663, was quite a character in the early days of the Province. Being named Pope he thought fit in a humorous vein to call his farm Rome and the little stream that ran through it Tiber."

John Pope in the year 1702 made his last Will, and devised his Real and Personal Estate in the Manner following

Viz. I give and bequeath to my loving Brother Robert Pope (if living at my decease) The Sum of ten pouns Sterling, to be paid by my Executors within convenient

[1] Hugh T. Taggart, *Records Columbian Hist. Soc.,* II.

Time after my decease. But if my said Brother should not be then living, my Will is, that my said Executors pay the said Sum of ten pounds to the next Heir of the said Robert Pope, and to him or her to hold and enjoy forever—

All the rest of my Estate both Real and Personal, I give and bequeath to my dear and loving Wife Margaret Pope, and to her Heirs and Assigns forever—But if it should so happen, that my said Wife marry or depart this Life without any Disposition of the said Estate, Then my Will is, that after my said Wife's decease, the same shall go and descend to my Daughter Frances Ungle, and to the Heirs of her Body begotten or to be begotten forever; and for want of such Issue, then I give and bequeath the same Estate to my aforesaid Brother Robert Pope near Bristol in the Kingdom of England, and to his Heirs and Assigns forever—

Margaret Pope never married, But sold part of the Real Estate and mortgaged the Rest—

1 Quer. What Estate did Margaret Pope take by the Will, an absolute or a qualified Fee simple?

2 Quer. Is the Limitation over to Frances Ungle, good by Way of Executory Devise, or could it take Effect . . . under the Circumstances above-mentioned?

[Margin of MS. badly mutilated.]

The first part of the devise being to Margaret Pope her Heirs and Assigns and [ ] Limitation over to Mrs Ungle depending upon the Contingent of Mrs. Popes marrying or dying without making a disposition of the Estate, I take it to be clear, that Mrs. Pope took an Estate in fee-simple in the Lands, determinable upon her dying without making a Disposition of [——] Estate—

The devise to Mrs. Ungle is good by way of Executory Devise [ ] as to all those Lands Mrs. Pope has not disposed of; But as Mrs. Pope sold Part of the Lands (which I suppose to be in fee, and that the Conveyances are

good) and mortgaged the rest; the only Question seems to be, if the mortgage is such a disposition as will satisfy the Words of the Will, and prevent the Opperation of the Devise to [Mrs.] Ungle. This will greatly depend upon the Nature of the Mortgag[e] and the Circumstances attendant thereon. If the Mortgage convey[ ] a Fee-simple in the Lands, under a certain limited time to [ ]deem, and there was a Breach of that Condition, and Mrs. Pope did never redeem the Lands, but suffered the Mortgagee to enter [ ] hold them or to sell and convey them; then I think the Mortgage [ ] such a Disposition as will satisfy the Words of the Will, and will p[re]vent the other Divisees recovering the Lands at common Law, for by the Breach of the Condition in the Mortgage, the Mortgagee's Estate at Law becomes absolute, and altho' the Right of Redemption be inherent in the Land, 'till the Equity of Redemption is foreclosed and the other Devisees may in a Court of Equity have Right to re[ ]yet, untill they obtain a decree for that purpose, they cannot recover in a Court of Common Law—

CHA GOLDSBOROUGH
Feby. 26th, 1763.

[Endorsement]
Copy of
CH: GOLDSBOROUGH Esqu.
his OPINION on
JOHN POPE'S WILL 1763—

Upon the Will of John Pope—

Q. What estate had Mrs. Pope in the Land called Rome, under the Will of her Husband John Pope?

Q. Was the Act of Sale of part a Mortgage of the Residue of the real estate by Mrs. Pope such a Disposition as would prevent the Limitations ever from taking effect?

Q. What estate has Mrs. Ungle in the Land? She was Frances the Daughter of Jno. Pope mentioned in his Will.

These Q.s. being a good deal involved in each other I will consider them together.

Mrs. Pope had undoubtedly an estate in fee-simple in the Land called Rome under the Will of her Husband; the Limitation being expressly to her and her Heirs and Assigns forever. The only Doubts that can arise in the Case, I apprehend, are whether the Limitations over to the Daughter and Brother of the Testator are such as the Law would allow of: and if they are such, then whether the Acts done by Mrs. Pope in her Life time would prevent those Limitations from taking effect.

It is a principle in the Law of England that no Estate can be limited after a fee-simple; for when a man has given the whole fee-simple in his Land to another, he has given all that he himself had, and therefore can have nothing left to dispose of. Another Reason, founded in the Policy of the Law, is that should a Limitation after a fee-simple be allowd of the Conveyance would be a Perpetuity, that is, an Estate unalienable tho all Persons interested in the estate should join in the Conveyance; and because it is for the publick Interest that all estates should be alienable, by some means or other, the Law does not permit a Perpetuity to be enacted by any mode of Conveyance whatever. But this Principle is subject to this Qualification—That a Limitation may be made after a fee-simple which is appointed to cease or determine upon a future Contingency which must happen, if at all, within the Compas of a Life—or Lives in being and twenty one years after. To illustrate this by Instances—A. devised Land to B. and his Heirs forever; but if B. dies without Heirs, Limitation over to C. a Stranger: The Limita over is void; for if it should be allow'd to be good the Conveyance would be that the Estate of B., altho a fee-simple, would be forever unalienable; for no man would purchase an Estate which might determine the next day by the Death of the vendor

without Heirs, in Consequence of wch the Person to whom the Limita over was made might recover the Land from the Purchaser. But if A. devises Land to B. and his Heirs for ever; and if B. dies in the Lifetime of C, Limita. over to C. this Limita is good—for altho the Law dos not allow of a Limita. that would create a Perpetuity i. e. would render the estate forever unalienable, it does in Compliance with the Will of a Testator permit a Limita. which will make the estate unalienable for a short Time only. As in this Case, until the Event upon which the Lima. over depends dos happen, or until it becomes impossible to happen the Estate of B., altho it be a fee-simple is unalienable; but this Impediment to Alienation must necessarily determine within the Compass of B's Life or immediately upon his Death, for if B. dies before C. his Estate is determined and C. takes the Land. If C. dies before B. it is then become impossible that the Event upon which the Lima. to C. depended can never happen, so that B's Estate is thereby discharged of the Limitation over and is consequently alienable. There are Cases when the Judges have allowd of such Limita. after a fee—upon a Contingency that must happen within the Compas of a Life or Lives in being and twenty one years after, but I do not know that it has ever been carried farther. I have been thus full upon this Subject (which is well understood by every Lawyer) to the end that what I shall say relative to the present Qu. may be the better understood by such as are not Lawyers.

With respect then to the present Case—I am of Opinion that the Limita. over to the Daughter of the Testa. and the Heirs of her Body after the fee-simple devised to his Wife —was good in its Creation; for it depended upon Contingys which either must happen or become impossible to happen within the Compas of her Life or immediately upon her Death—If she married, that must be in her Life-time, and in that Event the Estate went immediately to the Daughter.

If she made a Disposition of the Estate, this too must be in her Life time, and by this it would become impossible that the Contingency of her dying without any Disposition of the Estate could ever happen, and thereby the Lima. to the Daughter would have been defeated. And it is not materl. of what nature the Contingency, upon which the Limita over depends, is; it is only necessary that it be such as must happen or become impossible to happen within the Time allowd by Law. If under the Circumstances of the Case the Limitation to the Daughter took effect, she had an Estate Tail, and then the Limita to the Brother would be a good vested Remainder in fee depending upon the Daughters Estate Tail. It remains, therefore, to consider in the next place—Whether the acts done by Mrs. Pope in her Life-time, her Disposition of the estate in the manner stated, were such as defeated the Limitation to the Daughr, and prevented that from taking effect, whereby the Lima. to the Brother woud consequently and necessarily be also defeated?

In order to consider this Qu. fully I will premise—that the Word *Estate,* when used in a Will, may signify either the Subject or thing devised—or the Testators Interest in the thing devised—or it may signify both the Subject and the Testators Interest in it, according to the Intention of the Testator in making use of the Word. Testator devises " all his real Estate "—here the word estate signifies both the Subject and the Testors Interest in it, and a fee will pass if he had a fee. He devises Black Acre and " all his Estate therein "; here the Word Estate signifies his Interest in Black Acre, for he himself has distinguished between the Subject devised, and his Interest in it. So in the present Case the Testator devises to his Wife " all his real Estate to her and her Heirs and Assigns forever." It is apparent that by the Words " real Estate " he here meant nothing more than the Subject devised, because he has sup-

eradded Words of Limitation to define and point out the Interest he intended she should have in it, which would have been useless and superflous if by the Words real estate he had meant his Interest in it as well as the Subject devised. This is rendered still more plain, if it be possible, by the Words of Limita of estate used in the Devises over to his Daughter and Brother in which the Language is " if my Wife marry, or depart this Life without any Disposition of the *said* Estate, then my Will is that after my said Wifes decease the *same* shall go and descend to my Daughr Frances and to the Heirs of her Body begotten etc. and for Want of such issue I give and bequeath the *same* Estate to my Brother Robert Pope and his Heirs and assigns forever." I take it to be a good and true Rule that the same Word used in different parts of a Will shall have the same meaning; if it may, Consistent with a reasonable Construction of the Will. Taking, then, the Words " real Estate " in the Devise to Mrs Pope to mean, in the Intention of the Testa. nothing more than the Subject devised, the Will may be read thus. " I give my Lands and other real estate to my Wife Margaret Pope and her Heirs and Assigns forever; but if she shou'd marry or die without any Disposition of the sd Lands etc My Will is that the same (Lands etc.) shall go and descend to my Daughr Frances and the Heirs of her Body etc. and for Want of such issue I give and bequeath the *same* (Lands) to my Bror. and his Heirs etc.—This a very natural Construction of the Will, and what the Testor may very well be presumed to have intended. Whereas if by the Words " real estate " in the Devise to his Wife the Testa. wants his Interest in as well as the Subject itself devised, the Will must be read thus—I give to my Wife the fee simple of my Lands and other real estate to her and her Heirs etc. but if she marry, or depart this Life without any Disposition of the *said fee simple* my Will is that the *same* (fee-Simple) shall go and

descend to my Daughr and the Heirs of her Body, and for Want of such issue I give the *Same* fee-simple to my Brother and his Heirs etc.—Now this reading would be incongruous, because it would make the Testator say that his Daughter should have an estate of fee simple, intail; a Construction which nothing but the Necessity of the case could justifie; but there is no such Necessity in this case—for taking the Words real estate to be in the Intention of Testator a Description of the Subject devised, the whole Stands Consistent.

I have endeavoured to prove that by the Words real estate in the Devise to his Wife Testor intended nothing more than a Description of the Subject devised—that they stand as Synonymous with Lands, Houses etc. and must have the same Construction throughout the Will. If I am right in this I think it will follow that the Acts done by Mrs. Pope in her Lifetime were such as would effectually defeat the Limita. over to the Daughter and Consequently that to the Brother, and prevent their ever taking effect.

As Mrs. Pope did not marry again that Contingency may be laid out of the Case; no Question can arise upon it and I conceive also that there can be no Doubt but the Limitations over were defeated as to that part of the Lands which she *Sold* (by which I understand a Conveya of her whole Interest therein) The only Qu then will be when the Mortgage was a Disposition within the Intention of the Testator? The Testator intended that the Lands should go to the Devisees over, in Case those Limitations took effect, in the same Plight and Condition in which his Wife took them; therefore the Limitations depend upon her dying without *any* Dispotion [sic] of them.

AMERICAN CATHOLIC HISTORICAL NOTES.

Only Three.

In August 1797 there were only three "Papists" in Kent County, Maryland, namely, Edward Mackdonnall, Tho. Collins, and James Bruard.

None.

In Prince George County there was "neither Papist, Priest, Lay Brother, Parish Church nor Chapel." (His. Col. P. E. Church in Md., p. 23.)

Our History "Not Yet Written."

The history of the Catholic Church in America has not yet been written except in the most fragmentary manner, and yet it would be of great benefit to us all to have a more intimate knowledge of the illustrious deeds of the men and women who have preceded us in the Faith. (Dr. L. F. Flick, 1893.)

The Wisconsin Historical Society has a copy of a pamphlet issued in London in 1824, entitled: "An account of the Progress of the Catholic Religion in the Western States of North America." It is probably by Father Badin.

The Abnakis and Father Rale.

In Collections of the Maine Historical Society, Volume VI, published in 1859, are two papers on the Abnaki Indians, one by Mr. Frederick Kidder, the other by Father Vetromile.

Criticisms on these contributions to the history of these Catholic Indians may be read in the Historical Magazine, Volume IV, p. 30, 1860. It states the proper spelling of