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THE DOCTRINE OF WORTHIER TITLE

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Professor Leach in his casebook on future interests[1] states that no difficulties are generally encountered in the law concerning reversions except where there is an attempt to give one's heirs an interest which, had there been no such gift, would have passed them as a reversion. The technical difficulty that arises in such a situation is created by the so-called doctrine of worthier title. The doctrine stood for the proposition that a conveyance inter vivos or a gift by will to the heirs of the grantor or testator or to his next of kin of the same estate which they would take as heirs or next of kin by inheritance, was void, since they took by inheritance or succession rather than by the deed or will.[2] In effect this common law rule provided that one could not create a remainder in his own heirs and what purported to be a remainder was really a reversion. At common law this rule operated as a rule of law and was applied regardless of the grantor or testator's interest.[3] Thus a conveyance from A to B for life, the remainder to the heirs of A had the same effect as if the remainder to A's heirs had not been included. The words were treated as mere surplusage.

The doctrine was not only applicable to inter vivos conveyances and devises of realty but also applied to personalty.[4] It is interesting to note here that the Rule in Shelley's Case which had its foundation in similar feudal conditions as the doctrine of worthier title did not apply to personal property.[5] The rule has been said to have been broader with reference to devises than with inter vivos transactions because it also applied where the devise was to persons who were heirs of the testator, even though described by name.[6] In inter vivos conveyances if the remainder were

1 - Leach, Cases on the Law of Future Interests P. 3.
2 - 3 Walsh, Commentaries on the Law of Real Property 85.
3 - Doctor v. Hughes, 225 N.Y. 305, 122 N.E. 221 (1919); Nossaman, 24 Cal. S.B.J. 61.
4 - 1 Simes, The Law of Future Interests 264; In Re Estate of Warren, 211 Iowa 940, 234 N.W. 825 (1931); Berlenbach v. Chemical Bank & Trust Co., 235 App. Div. 170, 256 N.Y.S. 563 (1932); Re-Statement, Property, Sec. 314 (1).
5 - 1 Simes, Law of Future Interests 264.
6 - Restatement, Property, Sec. 314, Com. J.

made to a named person who subsequently became an heir, the rule did not apply.[7] It was applicable even if the conveyance to the heirs was made subject to a condition precedent.[8] It is thought that a conveyance of an executory interest to the heirs does not come within the rule rule.[9]

The reasons stated for the rule were various. It was said that the heirs take by intestacy rather than by devise because title by descent was the worthier title. Also stated was the reason that the law having determined how title should pass, the act of the grantor or devisor is construed as a vain and fruitless attempt to give that to the heirs which the law itself vests in them; it is speaking what the law speaks. These two reasons have been criticized as being inapplicable to conveyances since if, after a conveyance, the grantor conveys to a stranger the question would not be whether the heir takes by descent or by purchase, but whether the heir takes by purchase or the stranger takes by purchase.[10] Still another reason was probably the attempt to prevent the defeat of creditors of the grantor by a conveyance to the heirs in remainder.[11] The two main reasons, however, which gave the rule its formidable foundation at common law were Lord Coke's theory that the heirs were part of the ancestor's body while living[12] and the protection of the feudal obligations of relief, wardship, and marriage of which the feudal overlord would have been deprived if the heirs took by purchase.[13] Both of these reasons founded on feudalistic concepts having become obsolete it would seem that the rule should have disappeared. In England the rule was abolished by statute.[14] In the U.S. only one state has appeared to have abolished it by statute [15] The proposed Uniform Property Act of the American Law Institute abolishes it both as to inter vivos transactions and as to devises.[16]

The rule has persisted in the U.S. generally as a

7 - Restatement, Property, Sec. 314, Com. C; 1 Simes, Law of Future Interests 264.
8 - 1 Simes, Law of Future Interests 263, Restatement Property, Sec. 314 Com. F.
9 - 1 Simes, Law of Future Interests 263.
10 - 1 Simes, Law of Future Interests 261.
11 - 1 Simes, Law of Future Interests 261.
12 - Co. Litt. 22b.
13 - 1 Simes, Law of Future Interests 262; Restatement Property, Sec. 314, Com. A.
14 - Stat. 3 & 4 Wm. IV c. 106, Sec. 3 (1833).
15 - Restatement, Property, Sec. 3 & 4 (1) Sepcial Note.
16 - A.L.I., Proposed Uniform Property Act, Sec. 14 & 15.

rule of construction,[17] although there are some instances where it has continued as a rule of law.[18] The adoption of the rule as one of construction was largely due to the opinion of Cardozo, J. in Doctor v. Hughes where the rule was based on the presumed intent of the donor not to surrender his power of disposition. Although as a rule of law it defeated the intent of the testator,[19] it is held that its continuance as a rule of construction is due to a prevalence in modern times to effectuate the intention of the conveyor when no good reason requires its frustration.[20] Critics of the continuance of the doctrine as a rule of construction state that to adopt it as one of construction is to defeat the express intention of the grantor to create a remainder in the heirs.[21] The New York courts while giving lip service to the rule as enunciated by Justice Cardozo have, in subsequent cases under similar sets of facts, evaded it by finding an expression of contrary intent.[22]

Justice Cardozo in his establishment of the doctrine as a rule of construction states that there could be times when such gifts could be held to be remainders to heirs, "but at least the ancient rule survives to this extent, that to transform into a remainder what would ordinarily be a reversion, the intention to work the transformation must be clearly expressed."[23] Just what would be a manifestation of such a contrary intention is not intimated in the case itself. The Restatement of Property[24] seems to indicate that the means for manifesting such a contrary intention are limited. Two means there illustrated are: 1. A provision that the heirs are to take by purchase and not by descent. 2. An attempt by the grantor to make a complete disposition of his property. The second reason seems to have been the basis of some New York cases[25] to hold that there has been a manifestation of the grantor's intention so as to rebut the presumption of an intention to retain the reversion arising when the doctrine is applied as

17 - Doctor v. Hughes, supra; 1 simes, Law of Future Interests 265; Restatement, Property, Sec. 314. Com. A.
18 - Ellis v. Page (Mass.), 7 Cush. 161 (1851); King & Wife v. Dunham, 31 Ga. 743 (1861); Miller v. Fleming, 18 D.C. (7 Mackey) 139 (1889) West Tenn. Co. v. Townes, 52 F (2d) 764 (N.D. Miss. 1931).
19 - Note 3, supra.
20 - Restatement, Property, Sec. 314, Com. A.
21 - Walsh, Commentaries on the Law of Real Property 86, Note 6; Nossman, 24 Cal. S.B.J. 61.
22 - Whittemore v. Equitable Trust Co. 250 N.Y. 298, 165 N.E. 454 (1929); Engel v. Guaranty Trust Co., 280 N.Y. 43, 19 N.E. (2d) 673 (1939); Richardson v. Richardson, 298 N.Y. 135, 81 N.E. (2d) 54 (1948).
23 - Doctor v. Hughes, supra.
24 - Restatement, Property, Sec. 314 Com. E.
25 - Note 22 supra.

a rule of construction. These cases seem to be stronger cases for holding that the grantor intended a reversion in himself and they seem to bear out the critics[26] who contend that when the doctrine is applied as a rule of construction the courts say what the grantor didn't intend what he said in express words

The continuance of the rule as one of construction has been justified on two grounds; that it represents the grantor's intent[27] and on grounds of alienability.[28] The justification as to the grantor's probable intent is stated to be based on the premise that the grantor in making a gift over to the heirs intends the same thing as if he had given the property to his estate.[29] This fails as to testamentary gifts since the testator generally intends to dispose of everything. The argument of freedom of alienability seems to be stronger where the rule is applied as one of law.[30]

In California it was thought that the doctrine had not taken hold as a rule of construction[31] until it reared its head in a recent case.[32] Although no mention of the rule[33] was made in the previous cases, the Gray case has been cited as a situation where the rule does not apply since the grantor intends a class of remaindermen which might differ from the heirs general.[34] The recent California case adopts the rule as enunciated in Doctor v. Hughes, while at the same time distinguishing the two previous cases as falling within the limitations to the rule. The case falls in line with the rule as set forth in the Restatement of Property which declares it to be valid as a rule of construction in connection with inter vivos conveyances but not as to testamentary gifts.[35]

26 - Note 21 supra.
27 - Cardozo, J. in Doctor v. Hughes, supra, "and seldom do the living mean to forego the power of disposition during life by the direction that upon death there shall be a transfer to their heirs."
28 - Restatement, Property, Sec. 314 Com. A; Bixby v. California Trust Co. 33. Cal. 471, 202 P (2d) 1018 (1949).
29 - Bixby v. California Trust Co. supra; Restatement, Property, Sec. 314 Com- A.
30 - 1 Simes, Law of Future Interests 265; See Nossaman, 24 Cal. S. B. J. 63.
31 - Gray v. Union Trust Co. 171 Cal. 637, 154 P. 306 (1915); Hotchkiss 5B Cal. App. (2d) 445, 136 P (2d) 597.
32 - Bixby v. California Trust Co. supra.
33 - See 1 Stanford L. R. 774 (778).
34 - 1 Simes, Law of Future Interests 2661 Restatement, Property. Sec. 314 Com. C.
35 - Restatement, Property, Sec./ 314.

The significance of the doctrine today is generally encountered in these situations:

1. To determine whether the life beneficiary of a trust, who is also the grantor, has the entire beneficial interest so as to enable him to revoke what has been declared to be an irrevocable trust.
2. To determine whether a subsequent conveyance of the so-called remainder by the grantor is valid or not.
3. To determine whether creditors of the grantor can reach the so-called remainder.

In all the above situations the doctrine when applied construes the interest as a reversion and the result is the successful termination of the suits in situations (1) and (2) in favor of the grantor or his assigns and in situation (3) in favor of the creditors.

Some courts have confused the doctrine with the Rule in Shelley's Case. Though it is entirely possible that some of the same conditions of feudal society that gave rise to the Rule in Shelley's Case were responsible for the existance of the doctrine of worthier title,[37] the two rules were each applicable to distinct situations. The former rule was confined to limitations of an estate of inheritance to the heirs of one who has taken under the same instrument a prior estate of freehold, whereas the latter doctrine was concerned with the acts of the ancestor as between himself and his heirs.[38] Another reason given is that the doctrine of worthier title has been applied where the other rule has been abolished by statute.[39] There would seem to be no reason for confusing the two rules except where the Rule in Shelley's Case is followed by analogy.

36 - Restatement, Property, Sec. 314 Com. n.

37 - 1 Simes, Law of Future Interests 266.

38 - Doctor v. Hughes, supra.

39 - 1 Simes, Law of Future Interests 266; 1 Stanford L.R. 774 (777).