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DESCENT AND DISTRIBUTION--THE 'WORTHIER TITLE" DOCTRINE IN IOWA--A LIMITATION ESTABLISHED

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DESCENT AND DISTRIBUTION—THE "WORTHIER TITLE" DOCTRINE IN IOWA—A LIMITATION ESTABLISHED—Testator left his entire estate of less than $7,500 to his wife who had predeceased him. Defendants claimed the estate through operation of the anti-lapse statute, as heirs of the wife. As the distribution statute gave the widow of an intestate the first $7,500 of the estate, plaintiffs, heirs at law of the testator, claimed title on a basis of the "worthier title" doctrine, arguing that the widow, had she lived, would have taken by descent and not by purchase, and therefore the anti-lapse statute did not apply. On appeal from a denial of defendants' motion to transfer the proceeding to the probate court in this action to enjoin probate, *held,* reversed. The mere fact that the devise happened to coincide with what the devisee would have received under the distribution statute does not bring the "worthier title" doctrine into play, and thus the "contrary intention" necessary to prevent operation of the anti-lapse statute is not present. *Beem v. Beem,* (Iowa 1950) 41 N.W. (2d) 107.

For three hundred years under the common law of England, the courts applied what is termed the "worthier title" doctrine to the situation where *A,* owner in fee simple, devises his land to *B,* his heir. It was said that *B* takes the "worthier title" of *descent,* rather than taking by *purchase* under the will.[1] The doctrine was abolished in England by statute in 1837,[2] but has gained a foothold in approximately fourteen American jurisdictions.[3] The "worthier title" doctrine found its way into the jurisprudence of Iowa in a singularly inappropriate case in 1906[4] and has since been applied to situations unknown to the

[1] 20 VINER'S AB., 2d ed., 278. The American Law Institute takes the position that the "worthier title" doctrine does not apply to testamentary gifts. 3 PROPERTY RESTATEMENT §314 (1940). However, a number of states apply the doctrine to that situation.

[2] 3 & 4 Wm. 14, c. 106, §3.

[3] Harper and Heckel, "The Doctrine of Worthier Title," 24 ILL. L. REV. 627 at 642-3 (1930).

[4] Rice v. Burkhart, 130 Iowa 520, 107 N.W. 308 (1906). The court by way of dictum stated that ". . . the rule prevails that when property is left to the testator's heirs in the same manner and proportion in which they would have taken were there no will, they take as heirs, and not as devisees; the former being deemed the worthier title," citing cases from other jurisdictions. The issue was clouded with the peculiar aspects of the Iowa homestead statute, and it is interesting to speculate whether the doctrine would ever have found firm footing in that state had it not been for this bit of dictum.

common law. Foremost among the innovations was its application to the "forced heir" situation[5] in order to defeat the operation of the anti-lapse statute.[6] The Iowa anti-lapse statute provides that the heirs of a predeceased devisee shall take, "unless from the terms of the will a *contrary intent* is manifest,"[7] and the "worthier title" doctrine applies when the devisee receives the same "quantity and quality" of estate under the will as he would have obtained under the laws of descent.[8] Assuming that the "worthier title" doctrine can be properly applied in a situation where the devisee predeceases the testator, it would appear that the logical relationship between the "worthier title" doctrine and the anti-lapse statute is this: if the "worthier title" doctrine applies, then the provision in the will is void, and there is nothing upon which the anti-lapse statute can operate. However, the Iowa courts have not taken this view, and hold that a devise giving rise to application of the "worthier title" doctrine manifests the "contrary intent" necessary to prevent operation of the anti-lapse statute.[9] The real question under Iowa law to the time of the present case has therefore been simply whether or not the devise gave rise to application of the "worthier title" doctrine. In the leading case of *Tennant v. Smith*,[10] where testatrix devised to her husband Jonathan "such share of my estate as he is entitled to have and receive under the laws of the state of Iowa," and Jonathan predeceased the testatrix, the court held that if Jonathan had survived, he would have taken title by application of the "worthier title" doctrine and, therefore, this provided the "contrary intent" necessary to prevent operation of the anti-lapse statute. Thus the heirs of the testatrix took the estate.[11] It was inevitable that the Iowa court should eventually be faced with the situation of the principal case, where the devise in the will merely *happened* to coincide with the share which the spouse would have received under the distribution statute. Here the court refused to apply the "worthier

[5] At common law, the "worthier title" doctrine was applied to situations where the heir could have been disinherited. The Iowa court applies the doctrine to the case where the spouse is given a statutory share that cannot be defeated by the terms of the will. See 24 ILL. L. REV. 627 at 649 (1930).

[6] Iowa Code (1950) §633.16.

[7] Ibid.

[8] In re Estate of Davis, 204 Iowa 1231, 213 N.W. 395 (1927); In re Estate of Warren, 211 Iowa 940, 234 N.W. 835 (1931).

[9] In re Estate of Everett, 238 Iowa 564, 28 N.W. (2d) 21 (1947); principal case at 111.

[10] 173 Iowa 264, 155 N.W. 267 (1915).

[11] The "worthier title" doctrine was not applied to the situations where (a) The heir-devisee received more under the will than by statute [In re Will of Watenpaugh, 192 Iowa 1178, 186 N.W. 198 (1922)]; (b) The will directed the executor to convert the realty to personalty, thus giving the devisee a different "quality" of estate [In re Estate of Davis, 204 Iowa 1231, 213 N.W. 395 (1937)]; (c) A no-contest provision in the will created the possibility that co-devisees might receive a greater "quantity" of the estate by operation of a condition subsequent [Luglan v. Lenning, 214 Iowa 439, 239 N.W. 692 (1932)]; (d) The devise was subject to payment of a $50 bequest [Wehrman v. Farmers & Merchants Savings Bank, 221 Iowa 249, 259 N.W. 564 (1936)]; (e) The will gave the devisee less than she would have received under the statute [In re Estate of Everett, 238 Iowa 564, 28 N.W. (2d) 21 (1947)].

title" doctrine, not because of its inappropriateness, but because the court did not feel that the mere coincidence, without more, was sufficient to give rise to the necessary "contrary intent" which would prevent operation of the anti-lapse statute. The present case shows the extent to which the Iowa interpretation has departed from common law development of the "worthier title" doctrine, indicates a manifest reluctance by the court to contravene the objective of the anti-lapse statute, and fixes a definite limitation upon the application of the doctrine. It appears that future application of the "worthier title" doctrine in Iowa will be limited to those situations where the devise is expressed in terms of "statutory share" or the percentage of the estate provided in the distribution statute.[12]

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[12] An excellent discussion of the origin and development of the "worthier title" doctrine in England and the United States is found in Harper and Heckel, "The Doctrine of Worthier Title," 24 ILL. L. REV. 627 (1930).