

# Michigan Law Review

---

Volume 46 | Issue 7

---

1948

## FUTURE INTERESTS - STATUTE ABOLISHING THE RULE IN SHELLEY'S CASE APPLIED TO THE WORTHIER TITLE DOCTRINE

Joseph W. Morris  
*member of Kansas Bar*

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Common Law Commons](#), [Estates and Trusts Commons](#), and the [Property Law and Real Estate Commons](#)

---

### Recommended Citation

Joseph W. Morris, *FUTURE INTERESTS - STATUTE ABOLISHING THE RULE IN SHELLEY'S CASE APPLIED TO THE WORTHIER TITLE DOCTRINE*, 46 MICH. L. REV. 991 (1948).

Available at: <https://repository.law.umich.edu/mlr/vol46/iss7/17>

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mlaw.repository@umich.edu](mailto:mlaw.repository@umich.edu).

FUTURE INTERESTS — STATUTE ABOLISHING THE RULE IN SHELLEY'S CASE APPLIED TO THE WORTHIER TITLE DOCTRINE—Plaintiff set up an irrevocable trust of \$75,000 to pay the income to himself for life, and upon his death to distribute the remainder of the trust to his heirs at law according to the laws of succession of the State of California in existence at his death. He later brought suit to terminate the trust on the theory that the worthier title doctrine prevented the creation of a remainder in his heirs at law, and that as sole beneficiary of the trust, he was entitled to termination. *Held*, the worthier title doctrine was inapplicable because of a statute which changed the word "heirs" from a word of limitation to a word of purchase, thereby creating a remainder in the settlor's heirs, and preventing termination of the trust. *Bixby v. California Trust Co.*, (Cal. App. 1948) 190 P. (2d) 321.

At the English common law, if an owner of land made a conveyance of a life estate for a fee tail, with a remainder to his own heirs, the remainder was void and he had a reversion in himself.<sup>1</sup> It was said that a man could not take by purchase that which the law gave him by descent, title by descent being the worthier title. The rule prevailed as one of law and was applied without regard to the intention of the grantor.<sup>2</sup> The reasons for the rule seem to be found in the tenurial relationship between the lord and tenant.<sup>3</sup> Some feudal incidents were due the lord if the tenant were in by descent, but not if he were in by purchase. When feudal incidents were abolished in England<sup>4</sup> the primary reason for the rule disappeared and the rule was abolished by statute in 1833.<sup>5</sup> The rule survives in the United States as one of construction.<sup>6</sup> That is to say, "to trans-

<sup>1</sup> 1 CO. LITT. 22b; 18 VINER'S ABR., Remainder, (A); 8 BACON ABR., Remainder and Reversion, (B) 2; 1 HARGRAVES LAW TRACTS 571 (1787); Fennick & Mitford's Case, 1 LEO. 182, 74 Eng. Rep. 168 (1589); Bingham's Case, 2 CO. REP. 91a, 76 Eng. Rep. 611 (1598-1600); Earl of Bedford's Case, POP. 3, 79 Eng. Rep. 1126 (1592-1593). It is believed that one of the earliest statements of the rule is to be found in BROOKE'S ABRIDGEMENT, Donee and Remainder, 15, citing a case from 4 Hen. 8, (about 1513), as translated in *Goodtitle v. Otway*, 7 T.R. 399 at 404, 101 Eng. Rep. 1041 (1797) where he states: "If a man seised in fee give to A.B. in tail, remainder to the right heirs of the donor, the reversion remains in him; and this is not a remainder, but the fee and reversion remain in the donor as before the gift."

<sup>2</sup> Fennick and Mitford's Case, 1 LEO. 182, 74 Eng. Rep. 168 (1589). In this case it was emphatically stated, "that it was a reversion, and no remainder and by Gawdy, this limitation to his right heirs is meerly void." See also cases cited in note 1, supra.

<sup>3</sup> 8 BACON'S ABR., Remainder & Reversion, (B), 2.

<sup>4</sup> 12 CAR. 2, c. 24 (1660).

<sup>5</sup> 3 & 4 WM. 4, c. 106, § 3.

<sup>6</sup> *Doctor v. Hughes*, 225 N.Y. 305, 122 N.E. 221 (1919), noted in 4 CORN. L.Q. 83 (1919) and 28 YALE L.J. 713 (1919); *Whittemore v. Equitable Trust Co.*, 250 N.Y. 298, 165 N.E. 454 (1929), noted in 29 COL. L. REV. 837 (1929) and 7 N.Y. UNIV. L.Q. 543 (1929); *Engel v. Guaranty Trust Co.*, 280 N.Y. 43, 19

fer into a remainder what would ordinarily be a reversion, the intention to work the transformation must be clearly expressed."<sup>7</sup> Furthermore, the rule has been extended to apply to personal property in this country whereas it was limited to realty in England.<sup>8</sup> The importance of the rule to the plaintiff in the instant case is obvious, for if it had been applied he would have been the sole beneficiary of the trust and under general equitable principles could have terminated the trust.<sup>9</sup> The court clearly recognized the rule involved but refused to apply it for a curious reason. It appears that there exists in California a statute, apparently modeled after the New York statute, which was designed to abolish the rule in Shelley's case.<sup>10</sup> The statute provides as follows: "When a remainder is limited to the heirs, or heirs of the body, of a person to whom a life estate in the same property is given, the persons who, on the termination of the life estate, are the successors or heirs of the body of the owner for life, are entitled to take by virtue of the remainder so limited to them, and not as mere successors of the owner for life." The court applied this statute in the principal case thereby partially abolishing the worthier title doctrine. In so doing the court was completely aware of the fact that the rule in Shelley's case and the rule here considered are not the same, and that "their spheres of application are different."<sup>11</sup> Nevertheless, the court held "that by section 779 of the Civil Code, the word 'heirs' is changed from a word of limitation to a word of purchase. . . ."<sup>12</sup> The principal case seems to be a distinct departure from the usual application of statutes abolishing the rule in Shelley's case. Generally the courts have refused to bring the worthier title doctrine within the purview of such statutes.<sup>13</sup> This was the specific holding in New York in the leading case of *Doctor v. Hughes*.<sup>14</sup> Likewise, in Kentucky, a statute abolishing the rule in

N.E. (2d) 673 (1939); *Scholtz v. Central Hanover Bank & Trust Co.*, 295 N.Y. 488, 68 N.E. (2d) 503 (1946), noted in 22 N.Y. UNIV. L.Q. 342 (1947) and 13 BROOKLYN L. REV. 83 (1947); *Gordon v. Chemical Bank and Trust Co.*, 272 App. Div. 565, 73 N.Y.S. (2d) 914 (1947); *Wilcoxon v. Owen*, 237 Ala. 169, 185 S. 897 (1938); *Norman v. Horton*, 344 Mo. 290, 126 S.W. (2d) 187 (1939); *Fidelity Union Trust Co. v. Parfner*, 135 N.J. Eq. 133, 37 A. (2d) 675 (1944); *National Shawmut Bank of Boston v. Joy*, 315 Mass. 457, 53 N.E. (2d) 113 (1944), noted in 43 MICH. L. REV. 976 (1945); 1 SIMES, FUTURE INTERESTS, § 147 (1936); 3 PROPERTY RESTATEMENT, § 314 (1940).

<sup>7</sup> *Doctor v. Hughes*, 225 N.Y. 305, 122 N.E. 221 (1919).

<sup>8</sup> See cases cited in note 6, supra.

<sup>9</sup> 3 SCOTT ON TRUSTS, § 339 (1939); 2 TRUSTS RESTATEMENT, § 339 (1935).

<sup>10</sup> Cal. Civ. Code (1941) § 779. The New York statute on which the California statute is apparently based provides: "Where a remainder shall be limited to the heirs, or heirs of the body, of a person to whom a life estate in the same premises is given, the persons who, on the termination of the life estate, are the heirs, or heirs of the body, of such tenant for life, shall take as purchasers, by virtue of the remainder so limited to them." N.Y. Real Property Law (McKinney, 1945) § 54.

<sup>11</sup> Principal case at 327. It is interesting to notice that the rule in Shelley's case applies only to real property, and this statute abolishing the rule in Shelley's case is found in the real property section of the Civil Code, yet the trust here involved personal property only.

<sup>12</sup> Principal case at 328, quoting from Gray's case.

<sup>13</sup> 1 SIMES, FUTURE INTERESTS, § 148 (1936).

<sup>14</sup> 225 N.Y. 305, 122 N.E. 221 (1919).

Shelley's case has been said to be inapplicable because "the heirs therein referred to are the heirs of the grantee and not those of the grantor."<sup>15</sup> A like result has been reached in construing the Alabama statute.<sup>16</sup> If a literal interpretation is given to the California statute, it is sufficiently broad and general to encompass the fact situation found in the principal case. But it seems certain that the New York statute was not drafted with this end in view, and the California statute is apparently based on the New York statute. The wisdom of this piece of judicial legislation seems questionable. In the first place, the rule is not generally regarded as one of law and does not therefore serve to defeat the avowed intention of the grantor or settlor as does the rule in Shelley's case. Indeed, in the absence of a showing of an intention to create a remainder in his heirs, the average settlor probably does not desire to relinquish all control over the property during his lifetime.<sup>17</sup> In the second place, the application of this statute has the effect of only a partial abolition of the doctrine of worthier title. This makes for uncertainty and irregularity in application, with a probable increase in litigation. If it is thought that the rule is so undesirable that it should be abrogated, then a statute which would have the effect of total abolition would seem to be the preferable method of handling the situation.

*Joseph W. Morris \**

<sup>15</sup> Ky. Rev. Stat. (1946) § 381.090. The statute provides: "If any estate is given by deed or will to any person for his life, and after his death to his heirs, or the heirs of his body, or his issue or descendants, such estate shall be construed to be an estate for life only in such person, and a remainder in fee simple in his heirs, or the heirs of his body, or his issue or descendants." So construed in *Fidelity & Columbia Trust Co. v. Williams*, 268 Ky. 671, 105 S.W. (2d) 814 (1937).

<sup>16</sup> Ala. Code (1940) tit. 47, § 141. The statute provides: "Where a remainder created by a deed or will is limited to the heirs, issue, or heirs of the body of a person to whom a life estate in the same property is given, the persons who, on the termination of the life estate are the heirs, issue, or heirs of the body of such tenant for life, are entitled to take as purchasers by virtue of the remainder so limited to them." So construed in *Wilcoxon v. Owen*, 237 Ala. 169, 185 S. 897 (1938).

<sup>17</sup> 3 PROPERTY RESTATEMENT, § 314, comment (a) (1940).

\* LL.B. Washburn University; LL.M. University of Michigan; member of Kansas Bar.