FUTURE INTERESTS—WORTHIER TITLE DOCTRINE APPLIED TO REMAINDER TO NEXT OF KIN WHERE THE SUBJECT MATTER IS PERSONALTY

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RECENT DECISIONS

This section is divided into two parts; notes and abstracts. The abstracts consist merely of summaries of the facts and holdings of recent cases and are distinguished from the notes by the absence of discussion.

NOTES

FUTURE INTERESTS—WORTHIER TITLE DOCTRINE APPLIED TO REMAINDER TO NEXT OF KIN WHERE THE SUBJECT MATTER IS PERSONALTY—

The trustee bank petitioned for instructions as to the proper disposition of the remainder of a trust of personal property, the principal of which amounted to some $29,000 upon the life beneficiary's death in 1942. The donor had provided for a life estate in the income, the principal to go to the settlor's statutory next of kin under the laws of intestacy of the state of Massachusetts in default of the exercise by the settlor of a reserved power of appointment. The court, having held that a will which Nicolls, the settlor, had executed in favor of various friends of long standing was not an exercise of the power of appointment reserved in the trust instrument, the legatees then sought to reach the fund by invoking the rule of "worthier title," whereby, since a remainder in the trust fund had been created by the trust instrument to the grantor's heirs, and a title by descent is deemed a better title than one by purchase, the fund would revert to the settlor's estate and be distributed under his will. The court held that the doctrine of "worthier title," at least as it applied to equitable interests and interests in personalty, was no more than a rule of construction which could be outweighed by a showing of a contrary intent. In this case such an intent was shown. National Shawmut Bank of Boston v. Joy, (Mass. 1944) 53 N. E. (2d) 113.

Under the so-called "worthier title" doctrine, at common law a remainder to the grantor's heirs created a reversion in the grantor so that, despite the gift over, the property stayed in the grantor. Applying the theory to the instant case, the legatees under Nicholls' will contended that the trust property would revert to the settlor's estate and would then be subject to distribution according to the terms of his will. Under the singular situation arising in this case, the decision that the rule did not apply resulted in vesting the trust estate in cousins of the settlor living in England while the legatees under the will, who were apparently old friends of the testator, had a claim only to the residue of the decedent's property outside the fund. Except for the trust there remained less than $1000 in Nicholls' estate and this was primarily consumed in the payment of debts. The doctrine of "worthier title" by descent still survives from the English common law, but in a somewhat modified form. Title by descent was considered worthier and stronger than title by purchase and therefore if a claim on both grounds could be made by one and the same person he was deemed to take by descent rather than by devise. The doctrine has now become partially obsolete, however. The theoretical basis for the rule is not clear and the explanations generally given are hardly applicable today, but the practical reasons for the rule

1 The rule was abolished in England in 1833 and heirs may now take as purchasers. 3 and 4 Will. IV, c. 106, § 3.

2 One writer has said, "the law having determined how title shall 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.'" SIMES, FUTURE INTERESTS, 261 (1936) quoting from I HARGRAVE'S LAW TRACTS 571, Couden v. Clerke, Hob. 29 at 30 (1646).
were numerous at the time of its inception. Creditors of the ancestor could not reach the assets in the hands of the heir if he took by purchase, but they could reach the property if the estate passed by descent. Some of the profitable incidents of feudal tenure were lost if estates in land passed by devise, for such incidents attached only to property passing by descent. Two different branches of the rule have been recognized, one in relation to intervivos conveyances and the other as to wills. The American Law Institute Restatement of Property takes tion that the rule does not apply at all in the case of wills, pointing out that the feudal reasons for the rule are non-existent today, and suggesting that it has lost its significance in modern decedents' estates law. The Restatement does recognize it, however, as a rule of construction applying to inter vivos transfers of land and personality. The doctrine was at one time regarded as an absolute rule of policy, but the Massachusetts court, the question appearing before it here in relation to personal property, considers it simply a rule of construction which

8 In 46 Harv. L. Rev. 993 (1933), the author discussing rules favoring title by descent over title by purchase said, "Out of the unwillingness of medieval landlords to be deprived of valuable feudal rights arose several doctrines of property law favoring transmittal by descent, which yielded the rights, over passage of title by purchase, which denied them." See also Edward H. Warren, "A Remainder to the Grantor's Heirs," 22 Tex. L. Rev. 22 (1943). In the form of a lecture Professor Warren presents an interesting exposition of the rule of "worthier title," its ramifications and modifications, Under the doctrine, he points out, a gift "To the heirs of Sarah" is treated as merely a blundering attempt by an unskillful conveyancer to express the reversion which would have arisen by operation of law." Warren then asks the question, is this a correct interpretation and answers it in the affirmative. "It is not within the bounds of reason to suppose that Sarah meant to give John and Mary [her heirs] a rope wherewith to tie her hands and deprive her of . . . valuable rights." Id at 23. He advocates that the thing be treated as a rule of construction rather than of property, but he discusses the arguments for an absolute rule. He mentions the historical one given by Coke, "that there was something in the nature of legal conceptions that prevented a man from giving to his heirs, on the ground that a man's heirs were part of himself . . . his thought was that a man could not more convey to his heirs than he could convey to himself." Warren says, "I regard what Coke said as a characteristic product of medieval philosophy, not untouched by the whimsical and appraise it accordingly." Id. at 25.

4 Since the rule operates as of the time the gift takes effect, it can never apply to a grantee designated by name in an inter vivos transfer. A deed takes effect when made (upon delivery) and at that time the grantor's heirs are not ascertainable. In the case of a will, however, it may be determined at the time the instrument becomes operative (i.e. the death of the testator) whether the named donee is or is not also the legal heir.

6 The doctrine of "worthier title" has been applied to personal property as well as realty. American Law Institute Restatement of Property, § 314. "Due to a
may be rebutted. The New York Court in the leading case of Doctor v. 
Hughes\(^7\) regarded the doctrine as a presumption of construction and not as an 
absolute rule of law. The court laid down the proposition that the rule was one 
of construction only and then proceeded to decide that the presumption in favor 
of the existence of a reversion in the grantor was not rebutted in the case before 
it. Cardozo said, “No one is heir to the living, and seldom do the living mean 
to forgo the power of disposition during life by direction that upon death there 
shall be a transfer to their heirs...” Thus its interpretation of the doctrine to 
some extent would appear to be dictum. Nevertheless Cardozo’s view of the rule 
has been followed in New York and the Massachusetts court in the instant case 
has adopted it,\(^8\) deciding that as a matter of construction the presumption of a 
reversion to the grantor was rebutted. The court reasoned according to the 
maxim, “It is a canon of construction that every word and phrase in an instru­
ment is if possible to be given meaning” and declared that “the construction con­
tended for by the legatees would reduce the provision actually made to a useless 
declaration of the law.”\(^9\) As a positive rule of law the doctrine’s only justifica­
tion today would seem to be in facilitating the alienability of land. If applied as 
an absolute rule it may operate to defeat the intent of a grantor to create a real 
remainder in his heirs. Thus there is a tendency to minimize the doctrine’s 
operation and to consider it a rule of construction merely, thereby giving effect 
to a contrary intent of the testator or grantor if clearly expressed. Indeed in the 
Uniform Property Act, promulgated by the Commissioners on Uniform State 
Laws, both branches of the doctrine of “worthier title” are abolished.\(^10\)

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prevalence in modern times of a policy to effectuate the intention of the conveyor when 
no good reason requires its frustration, the modern authorities have relaxed this rule of 
law [“worthier title”] into a rule of construction. The rule thus diluted has been ex­
tended to interests in personalty with a resultant symetry in the law.”

\(^7\) 122 N. E. 221, 225 N. Y. 305 (1919).

\(^8\) The court said, “the rule of ‘worthier title’ as applied to equitable interests and 
interests in personalty, at least, is now no more than a precept of construction which 
may be outweighed by indication of a contrary intent” (53 N. E. (2d) 113 at 118), 
the presumption being that a gift to the grantor’s heirs is in effect a reversion in the 
grantor.

\(^9\) 53 N. E. (2d) 113 at 119. In Whittemore v. Equitable Trust, 165 N. E. 454, 
250 N. Y. 298 (1929) it was held that a reservation of power of appointment in the 
settlor indicated an intent to part with control over the property and to rebut the pres­
umption of a reversion in the grantor where the property, in default of appointment, 
was to go to his heirs. The court reasoned that if the settlor had merely established a 
life estate, remainder to his heirs, it would indicate that he was not thinking particu­
larly about vesting any interest in the heirs. But where he gave the remainder to his 
wife and children and then reserved a power to change that remainder by appointment 
it indicates a considered and deliberate gift to his heirs.

\(^10\) U. L. A. 9, Miscellaneous Acts, §§ 14, 15, p. 616. The Uniform Act, including 
these provisions has been adopted by the Nebraska legislature, 1941 C. S. §§ 76-
1014, 76-1015.