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## Taxation--Trusts--Interest of One entitled to Receive Income for Life From Trust Fund

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In view of these considerations it would seem that "descend" was used in its popular sense, as "to go" or "to pass." Under such a construction of the deed, our statute abolishing the Rule in Shelley's Case<sup>3</sup> would apparently limit Columbia Woolwine's estate to an equitable life estate and give her heirs a contingent remainder in fee simple. Thus construed the case would seem to be governed by *Carter v. Reserve Gas Company*<sup>4</sup> yet a contrary result was reached.

The plaintiffs were trying to recover an estate which had increased in value from \$1,400 in 1868, to near \$5,000,000 in 1930, and the defendants were trying to sustain titles to 152 acres of land which had been divided into city lots, streets and alleys, and comprised about one-third of the real estate in the City of Elkins. The decision of the Court, sustaining the contentions of the defendants, saved that great catastrophe to the City of Elkins, but denied to the Woolwine heirs an estate which, it would seem, vested in them on the death of Columbia Woolwine. The decision permitted a life tenant to destroy what may have been intended as a contingent remainder. It may be better to deny the titles of the Woolwine heirs than to precipitate upon the City of Elkins the probable result of upsetting one-third of the land titles in that city.<sup>5</sup>

—WILLIAM J. MOORE.

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TAXATION—TRUSTS—INTEREST OF ONE ENTITLED TO RECEIVE INCOME FOR LIFE FROM TRUST FUND.—A citizen of Virginia conveyed certain securities to a trustee in Maryland to pay the income to the settlor's children for life and after their death to divide the property among the settlor's descendants.<sup>1</sup> The taxing authorities of Virginia attempted to tax the interest of one of the children, a resident of Virginia, claiming she had an equitable life estate in the fund and taxable under the provision of the intangible property tax statute<sup>2</sup> imposing taxation on bonds, notes and all other de-

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<sup>3</sup> W. VA. REV. CODE (1931) c. 36, art. 1, § 14; W. VA. CODE ANN. (Barnes, 1923, c. 71, § 11.

<sup>4</sup> *Carter v. Reserve Gas Co.*, 84 W. Va. 741, 100 S. E. 738 (1919).

<sup>5</sup> See Pound, *Mechanical Jurisprudence* (1908) 8 COL. L. REV. 605; Hardman, *Stare Decisis and the Modern Trend* (1926) 32 W. VA. L. Q. 163.

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<sup>1</sup> *Commonwealth v. Safe Deposit & Trust Co.*, 155 S. E. 895 (1930).

<sup>2</sup> TAX CODE OF VIRGINIA (1930) c. 7, § 69.

mands or claims, whether secured by deed of trust, mortgage or otherwise, or not so secured.

Had the court construed the interest of the beneficiary as an equitable life estate in the trust fund and held such estate taxable under the statute, the taxation would probably be considered unconstitutional in view of the recent decision of *Safe Deposit & Trust Company v. Virginia*,<sup>3</sup> in which it was held, that, when intangible personal property is located beyond the domicile of the equitable owner and not subject to being moved by the equitable owner, the maxim *mobilia sequuntur personam* will not be applied and the state in which the equitable owner lives does not have jurisdiction to tax the property. The court, however, evaded all questions of constitutionality by holding that this beneficiary had no interest in the property, but only a right in the income for life and that it was not taxable under the statute.

The position of the court, that the trustee held only the income in trust for this beneficiary and that this beneficiary had no interest in the securities, is a novel one. No authority was cited by the court for such statement, and the writer has been unable to find any. Cases are numerous holding a grant or devise of profits from land is a grant of the land.<sup>4</sup> By analogy it would seem that a grant of property to one in trust to manage it and give the profits to another for life would create some kind of estate in such other in the property. What more is a life estate in property than the right to receive the benefits from the property for life? Does putting legal title in another take away all interest in the property itself from the person entitled to the benefits? The West Virginia Supreme Court<sup>5</sup> seemingly adopts the view that it does not, by accepting Story's definition,<sup>6</sup> that a trust is "an equitable right, title, or interest in property real or personal, distinct from the legal ownership thereof. In other words, the legal owner holds the direct and absolute dominion over the property in the view of the law, but the income, profits or benefits thereof in his hands belong wholly or in part to others." Under this definition of a trust, the person entitled to the benefits of the trust fund for life has an equitable interest in the fund itself for life.

—JOHN HAMPTON HOGE.

<sup>3</sup> 280 U. S. 83, 50 S. Ct. 59 (1929).

<sup>4</sup> *Schrivver v. Cobean*, 4 Watts (Pa.) 130 (1835); *In re France*, 75 Pa. St. 220 (1874); *Johnson v. Arnold*, 1 Ves. 169, 27 Eng. Reprint 962 (1748). See COKE ON LITTLETON 4, b.

<sup>5</sup> *Wilson v. Kennedy*, 63 W. Va. 1, 50 S. E. 736 (1908).

<sup>6</sup> 2 STORY'S EQUITY JURISPRUDENCE (13th ed. 1886) § 964.