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FUTURE INTERESTS-WORTHIER TITLE DOCTRINE

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FUTURE INTERESTS—WORTHIER TITLE DOCTRINE—Plaintiff created an irrevocable trust of $75,000, reserving the income to himself for life and directing distribution of the corpus upon his death to his heirs according to the California laws of succession in existence at his death. Later he sued to terminate the trust on the theory that since the worthier title doctrine prevented creation of a remainder in his heirs, he was sole beneficiary. The intermediate California appellate court held that the worthier title doctrine was inapplicable because of a California statute changing the word "heirs" from one of limitation to one of purchase. Therefore, the outstanding remainder in the heirs prevented termination of the trust.[1] On appeal to the California Supreme Court, *held*, reversed. As a matter of construction, when the settlor created a life estate in himself with a limitation to his heirs he did not intend to create an interest in his heirs. *Bixby v. California Trust Co.*, (Cal. 1949) 202 P. (2d) 1018.

At common law one could not take by purchase what the law gave him by descent, title by descent being the worthier title.[2] The doctrine, like the rule in Shelley's case, was one of law, applied without regard to the intention of the grantor.[3] Although the rule was abolished in England in 1833, it has survived in the United States as a rule of construction and has been extended to trusts of personal property.[4] American statutes abolishing the rule in Shelley's case have generally been held to leave the worthier title doctrine unimpaired.[5] Nevertheless, the lower court in the principal case refused to terminate the trust, relying chiefly on a California statute designed to eliminate the rule in Shelley's case[6] and the broad scope attributed to the statute in an earlier California Supreme Court decision.[7] The lower court's interpretation of the statute was adversely

[1] Bixby v. California Trust Co., (Cal. App. 1948) 190 P. (2d) 321.

[2] 1 Co. LITT. 22b; 18 VINER'S ABR., Remainder, (A); Bingham's Case, 2 Co. Rep. 91a, 76 Eng. Rep. 611 (1598-1600). See 1 SIMES, FUTURE INTERESTS, §144 (1936).

[3] Fennick and Mitford's Case, 1 Leo. 182, 74 Eng. Rep. 168 (1589). See note 2, supra.

[4] Doctor v. Hughes, 225 N.Y. 305, 122 N.E. 221 (1919); Whittemore v. Equitable Trust Co., 250 N.Y. 298, 165 N.E. 454 (1929); Wilcoxen v. Owen, 237 Ala. 169, 185 S. 897 (1938); Natl. Shawmut Bank v. Joy, 315 Mass. 457, 53 N.E. (2d) 113 (1944); 1 SIMES, FUTURE INTERESTS, §§146, 147 (1936); 3 PROPERTY RESTATEMENT, §314 (1940).

[5] Doctor v. Hughes, 225 N.Y. 305, 122 N.E. 221 (1919); Wilcoxen v. Owen, 237 Ala. 169, 185 S. 897 (1938); 1 SIMES, FUTURE INTERESTS, §148 (1936).

[6] "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." Cal. Civ. Code (1941) §779. Cf. N.Y. Real Property Law (McKinney, 1945) §54, construed in Doctor v. Hughes, 225 N.Y. 305, 122 N.E. 221 (1919).

[7] Gray v. Union Trust Co., 171 Cal. 637, 154 P. 306 (1915). In that case the court refused termination of a trust by a settlor who had retained a life estate with remainder to "her heirs at law, according to the laws of succession of the state of California as such laws *now* exist." (Italics supplied.) The statement in the Gray case was dictum since the worthier title doctrine has no application where the grantor specifies a class of remaindermen which might differ from his heirs at law. Thompson v. Batts, 168 N.C. 333, 84 S.E. 347 (1915); Boone v. Baird, 91 Miss. 420, 44 S. 929 (1907). See explanation of the Gray case in the principal case at 1020, and in 1 SIMES, FUTURE INTERESTS, §147, n. 22 (1936). The concurring opinion in the principal case suggests that the Gray case should be overruled.

criticized in the *Michigan Law Review* as unwise judicial legislation.[8] It was there urged that the worthier title doctrine as a rule of construction does not serve to defeat the intention of the grantor as does the rule in Shelley's case, but probably supports it. Since the statute would not literally effect a total abolition of the worthier title doctrine, its uncertain scope would tend to create unfortunate confusion.[9] In reversing the lower court's interpretation, the California Supreme Court mentions neither the statute nor the reasoning of the lower court. The decision is placed squarely on the rule of construction that no remainder interests are created by a trust in which the settlor reserves a life estate in himself and provides that on his death the corpus shall be distributed to his heirs. The court states that this result carries out the usual intention of the settlor, and is in accord with the general policy in favor of free alienability of property. It is clear, at least, that the holding is in accord with the general effect of the worthier title doctrine in the United States.

David H. Armstrong, S. Ed.

[8] 46 MICH. L. REV. 991 (1948).

[9] For example, the statute could have no application where grantor gave a life estate to X with remainder to the heirs of the grantor. See note 6, supra.