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Pleading, Practice and Procedure—Sanctions for Enforcement of Discovery—Constitutionality of Rule 37

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The present Washington case law is inconsistent concerning such a construction. The *Income Properties* case indicates a willingness by the court to exercise its inherent equitable powers and thus accomplish what was done in New York by statute. *Young v. Riley* does not overrule *Income Properties,* but does take a contrary position. The precedential value of *Young* is only greater because of its more recent origin. Whether it implicitly overrules *Income Properties* remains to be determined if and when both cases are argued to the court.

EVAN L. SCHWAB

PLEADING, PRACTICE AND PROCEDURE

Sanctions for Enforcement of Discovery—Constitutionality of Rule 37. The Washington Supreme Court recently heard *Mitchell v. Watson,*[1] a case of first impression concerning the interpretation, application, and constitutionality of Rule of Pleading, Practice and Procedure 37.[2] The principles derived from the decision have an im-

[1] 158 Wash. Dec. 194, 361 P.2d 744 (1961).

[2] WASH. *RPPP* 37: "*Refusal to make discovery: Consequences,* (a) *Refusal to Answer.* If a party or other deponent refuses to answer any question propounded upon oral examination, the examination shall be completed on other matters or adjourned, as the proponent of the question may prefer. Thereafter, on reasonable notice to all persons affected thereby, he may apply to the court in the county where the deposition is taken for an order compelling an answer. Upon the refusal of a deponent to answer any interrogatory submitted under Rule 31 or upon the refusal of a party to answer any interrogatory submitted under Rule 33, the proponent of the question may on like notice make like application for such an order. If the motion is granted, and if the court finds that the refusal was without substantial justification the court shall require the refusing party or deponent and the party or attorney advising the refusal or either of them to pay to the examining party the amount of the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees. If the motion is denied and if the court finds that the motion was made without substantial justification, the court shall require the examining party or the attorney advising the motion or both of them to pay to the refusing party or witness the amount of the reasonable expenses incurred in opposing the motion, including reasonable attorney's fees.

"(b) *Failure to Comply with Order.* (1) *Contempt.* If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the court in the county in which the deposition is being taken, the refusal may be considered a contempt of that court.

"(2) *Other Consequences.* If any party or an officer or managing agent of a party refuses to obey an order made under subdivision (a) of this rule requiring him to answer designated questions, or an order made under Rule 34 to produce any document or other thing for inspection, copying, or photographing or to permit it to be done, or to permit entry upon land or other property, or an order made under Rule 35 requiring him to submit to a physical or mental examination, the court may make such orders in regard to the refusal as are just, and among others the following:

"(i) An order that the matters regarding which the questions were asked or the character or description of the thing or land or the contents of the paper, or the physical or mental condition of the party, or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

"(ii) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing in evidence designated

portant impact upon the successful implementation of Rule 37 in Washington.

Emmett Watson, defendant in a libel action, appealed from a contempt order entered in the trial court. Watson had been served written interrogatories pursuant to Rule 33.[3] Upon failure to answer the interrogatories, pursuant to Rule 37, Watson was adjudged in contempt. The contempt order: (1) adjudged Watson guilty of contempt of court; (2) struck the answer of defendants Watson; (3) entered judgment by default against them on all issues, except the amount of

documents or things or items of testimony, or from introducing evidence of physical or mental condition;

"(iii) An order striking out pleadings or parts thereof or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

"(iv) In lieu of any of the foregoing orders or in addition thereto, an order directing the arrest of any party or agent of a party for disobeying any of such orders except an order to submit to a physical or mental examination.

"(c) *Expenses on Refusal to Admit.* If a party, after being served with a request under Rule 36 to admit the genuineness of any documents or the truth of any matters of fact, serves a sworn denial thereof and if the party requesting the admissions thereafter proves the genuineness of any such document or the truth of any such matter of fact, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making such proof including reasonable attorney's fees. Unless the court finds that there were good reasons for the denial or that the admissions sought were of no substantial importance, the order shall be made.

"(d) *Failure of Party to Attend or Serve Answers.* If a party or an officer or managing agent of a party wilfully fails to appear before the officer who is to take his deposition, after being served with a proper notice, or fails to serve answers to interrogatories submitted under Rule 33, after proper service of such interrogatories, the court on motion and notice may strike out all or any part of any pleading of that party, or dismiss the action or proceeding or any part thereof, or enter a judgment by default against that party."

[3] WASH. RPPP 33: **Interrogatories to parties.** Any party may serve upon any adverse party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer or agent who shall furnish such information as is available to the party. Interrogatories may be served after commencement of the action and without leave of court, except that, if service is made by the plaintiff within ten days after such commencement, leave of court granted with or without notice must first be obtained. The interrogatories shall be answered separately and fully in writing under oath. The answers shall be signed by the person making them; and the party upon whom the interrogatories have been served shall serve a copy of the answers on the party submitting the interrogatories within fifteen days after the service of the interrogatories, unless the court, on motion and notice and for good cause shown, enlarges or shortens the time. Within ten days after service of interrogatories a party may serve written objections thereto together with a notice of hearing the objections at the earliest practicable time. Answers to interrogatories to which objection is made shall be deferred until the time the objections are determined.

"Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the same extent as provided in Rule 26(d) for the use of the deposition of a party. Interrogatories may be served after a deposition has been taken, and a deposition may be sought after interrogatories have been answered, but the court, on motion of the deponent or the party interrogated, may make such protective order as justice may require. The number of interrogatories or of sets of interrogatories to be served is not limited except as justice requires to protect the party from annoyance, expense, embarrassment, or oppression. The provisions of Rule 30(b) are applicable for the protection of the party from whom answers to interrogatories are sought under this rule."

damages to be awarded plaintiffs; (4) prohibited defendants Watson from participating in the trial for damages "in any manner whatsoever until Emmett Watson complies with the lawful orders of this Court"; and (5) awarded plaintiffs' lawyers judgment for $200 attorney's fees against defendants Watson.

The refusal to answer was wilful. Watson refused to answer the interrogatories when propounded to him by counsel in open court and also upon direction to answer by the judge. The interrogatories asked the name and business address of the man from whom he purportedly received information for a story published in a Seattle daily newspaper.[4] Plaintiffs' contention was that such information was libelous and that they had sustained damages as a result of the publication. Upon appeal, the supreme court held that the contempt order, insofar as it struck Watson's answer and entered judgment by default, was void as a deprivation of property without due process of law.

Rule 37 provides for the application of certain designated sanctions when a party or deponent fails to comply with a discovery request. Administration of these sanctions is subject to constitutional limitations.

CONSTITUTIONALITY OF FEDERAL RULE 37

Washington's rules of pleading, practice and procedure are substantially the same as the federal rules. The advisory committee on the federal rules noted[5] that the constitutional application of Rule 37 is to be in the light of two leading cases, *Hovey v. Elliott*[6] and *Hammond Packing Co. v. Arkansas.*[7]

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[4] Interrogatories propounded to Watson:
"1. Referring to the subject of interrogation in your deposition of March 22, 1957, at page 10, line 23, and following: from how many persons or person did you obtain the information which was the basis for your insertion in your column 'This Our City' of the material alleged herein to be libelous?
"2. What are the names and addresses of each of the persons involved in your answer to interrogatory number one?
"3. What are the occupations and business addresses of each of said people?"
After a show cause hearing, but before entry of the contempt order, Watson filed an affidavit in which he stated, "I desire to answer Interrogatory No. 1 by stating: 'one man' and Interrogatory No. 3 (in part) by stating 'occupation of law enforcement.' I respectfully decline to answer Interrogatory No. 2 and the remainder of No. 3."

[5] Notes on Advisory Committee on the Rules, Rule 37, 28 U.S.C., p. 4325 (1952 ed.): "The provisions of this rule authorizing orders establishing facts or excluding evidence or striking pleadings, or authorizing judgments of dismissal or default, for refusal to answer questions or permit inspection or otherwise make discovery, are in accord with Hammond Packing Co. v. Arkansas which distinguishes between the justifiable use of such measures as a means of compelling the production of evidence, and their unjustifiable use, as in Hovey v. Elliott, for the mere purpose of punishing for contempt." (Citations omitted.)

[6] 167 U.S. 409 (1897).

[7] 212 U.S. 322 (1909).

In *Hovey*, the defendants were ordered to pay over a sum of money into the court registry. Upon failure to comply, the defendants were found in contempt of court. Defendants' pleadings were struck and a default judgment entered. On appeal to the United States Supreme Court, Justice White posed the question:

> whether a court possessing plenary power to punish for contempt, unlimited by statute, has the right to summon a defendant to answer, and then after obtaining jurisdiction by the summons, refuse to allow the party summoned to answer or strike his answer from the files, suppress the testimony in his favor, and condemn him without consideration thereof, and without a hearing, on the theory that he has been guilty of a contempt of court. The mere statement of this proposition would seem, in reason and conscience, to render imperative a negative answer. *The fundamental conception of a court of justice is condemnation only after hearing.*[8] (Emphasis added.)

The court order did not concern the merits of the case. Rather, it merely ordered the defendants to follow a court procedure. The default judgment entered as punishment for contempt was found to be void for want of due process. A party must have the opportunity to be heard in his own behalf before condemnation in order to secure the constitutional right of due process.

Eleven years later the *Hovey* doctrine was refined and limited in the *Hammond* case. The defendant company had been ordered to produce witnesses and records at a deposition proceeding. The trial court granted a motion to strike defendant's pleadings and to enter a default judgment after defendant had failed to comply with the discovery order. The Supreme Court held that the statute authorizing such procedure was constitutional. Justice White, again speaking for the court, distinguished the *Hovey* doctrine as follows:

> Is the doctrine of *Hovey v. Elliott* here applicable? .... The essential basis for the exercise of power ... is the criterion by which its validity is to be measured. *Hovey v. Elliott involved a denial of all right to defend as mere punishment.* This case presents a failure by the defendant to produce what we must assume was *material evidence* in its possession and a resulting striking out of an answer and a default. *The proceeding here taken may therefore find its sanction in the undoubted right of the lawmaking power to create a presumption of fact as to the bad faith and untruth of an answer begotten from the suppression or failure to produce the proof ordered, when such proof concerned the rightful decision of the*

[8] 167 U.S. at 413.

cause. In a sense, of course, the striking out of the answer and default was a punishment, but it was only remotely so, *as the generating source of the power was the right to create a presumption flowing from the failure to produce. The difference between mere punishment, as illustrated in Hovey v. Elliott, and the power exerted in this is as follows: In the former due process of law was denied by the refusal to hear. In this the preservation of due process was secured by the presumption that the refusal to produce evidence material to the administration of due process was but an admission of the want of merit in the asserted defense.*[9] (Emphasis added.)

This case created the "punishment" and "presumption" concepts which have been used by subsequent courts.[10] In *Hammond* the Court was explicit in pointing out that the "presumption" concept is only applicable where the refusal to produce concerned evidence material to the administration of due process. The evidence sought in *Hammond* went to all the issues raised by the pleadings. Therefore, a default judgment cannot be entered unless the failure to produce goes to matters which are the essence of the case.[11] However, this does not preclude application of lesser sanctions as provided by Federal Rule 37.

The *Hovey* doctrine has been further refined by the recent *Societe*

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[9] 212 U.S. at 350.

[10] Cases concerning Federal Rule 37 and following the *Hammond* doctrine: Bourne, Inc. v. Romero, 23 F.R.D. 292 (D. La. 1959) (default judgment upheld); Loosley v. Stone, 15 F.R.D. 373 (D. Ill. 1954) (complaint dismissed; upheld); Duell v. Duell, 178 F.2d 683 (D.C. Cir. 1949) (default judgment reversed); Peitzman v. City of Illmo, 141 F.2d 956 (8th Cir. 1944) (striking of answer upheld). Other cases following *Hammond* doctrines: National Union of Marine Cooks & Stewards v. Arnold, 348 U.S. 37 (1954); Wittenberg Coal Co. v. Compagnie Havraise Peninsuliare De Navigation A Vapeur, 22 F.2d 904 (2d Cir. 1927).

[11] Feingold v. Walworth Bros., 238 N.Y. 446, 144 N.E. 675, 678 (1924). The court stated: "When a defendant refuses to produce books and papers relating to the merits of the action, he may be deprived of the right to assert that, as far as they relate to the merits of the action, he has a good defense. The presumption arises that a failure to produce such evidence is an admission that it exists. The punishment is for withholding proof and is properly limited to exclude what the proof presumptively establishes. But to punish generally for a refusal to produce by striking out an entire answer, which not only puts in issue all the material allegations of the complaint, but includes affirmative defenses, comes perilously near the denial of due process.... The power to punish is limited by the presumption which attaches to the suppression of the evidence suppressed."

An excellent interpretation of Federal Rule 37 appears in Bernat v. Pennsylvania R.R., 14 F.R.D. 465 (D. Penn. 1953). The court stated at 465: "In a case where the refusal to produce a document makes it impossible for the plaintiff to prepare or present his case. a default judgment would be the proper remedy. However, the rule provides for a number of consequences of varying degrees of severity and I think it is clearly intended that the court should fit the penalty to the nature and effects of the refusal. Of course, in refusing to obey the order of the court defendant takes a calculated risk, but it is plain, that it was not intended that he should automatically incur a default judgment in every case." But see, *Developments in the Law—Discovery,* 74 HARV. L. REV. 940, 990 (1961).

Internationale case.[12] The Court held that bad faith or wilfulness[13] must accompany the failure to comply with a discovery order before the more drastic sanctions of Rule 37(b)(2) apply.

WASHINGTON PRIOR TO RULE 37

RCW 5.04.060[14] (abrogated and superseded by Rule 37 in 1957) since 1854 provided for sanctions similar to those of Rule 37. The constitutionality of the statute was tested in *Lawson v. Black Diamond Coal Mining Co.*[15] The court set the same limitations upon the application of sanctions as did *Hovey* and *Hammond.*

If the sanction was imposed merely as punishment such imposition would be unconstitutional. To determine if the imposition was mere punishment, the discovery request must be read in light of the relationship between the information desired and the issues in the case. The default judgment sanction was limited to apply only when there was a failure to make discovery of material facts relating to substantially all the issues in the case.[16]

IMPLEMENTATION OF WASHINGTON RULE 37

The court in *Mitchell* expressly followed the principles derived from the foregoing cases. The following principles constitute the framework in which Washington Rule 37 will be implemented:

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[12] Societe Internationale Pour Participations Industrielles et Commerciales, S. A. v. Rogers, 357 U.S. 197 (1958).

[13] See Brookdale Mill v. Rawley, 218 F.2d 728 (6th Cir. 1954). The court stated that a *willful* violation of a provision of a rule is any conscious or intentional failure to comply, as distinguished from accidental or involuntary non-compliance. A wrongful intent need not be shown to make such a failure willful.

See also, Cardox Corp. v. Olin Mathieson Chemical Corp., 23 F.R.D. 27 (D. Ill. 1958); United Sheeplined Clothing Co. v. Arctic Fur Cap Corp., 165 F. Supp. 193 (D.N.Y. 1958); Forde v. Urania Transportation, Inc., 168 F. Supp. 240 (D.N.Y. 1958); Haskell v. Philadelphia Transportation Co., 19 F.R.D. 356 (D. Penn. 1956); Grimmett v. Atchison, Topeka & Sante Fe Ry., 11 F.R.D. 335 (D. Ohio 1951); Roth v. Paramount Pictures Distributing Corp., 8 F.R.D. 31 (D. Penn. 1948).

Before the *Societe Internationale* decision there had been much confusion as to the presence of the word "willfully" in Federal Rule 37(d) and its absence from Federal Rule 37(b). See Rosenberg, *Sanctions to Effectuate Pretrial Discovery,* 58 COLUM L. REV. 480, 489-496 (1958) for an enlightening criticism of Federal Rule 37.

[14] RCW 5.04.060 provided that: "If a party refuses to attend and testify at the trial, or to be examined upon a commission, or to answer any interrogatories filed, his complaint, answer, or reply may be stricken out, and judgment taken against him, and he may also, in the discretion of the court, be proceeded against as in other cases for a contempt: *Provided,* That the preceding sections shall not be construed so as to compel any person to answer any question, where such answer may tend to incriminate himself." RCW 5.04.060 was repealed by Wash. Sess. Laws 1961, ch. 50, § 1.

[15] 44 Wash. 26, 86 Pac. 1120 (1906).

[16] See Anderson v. Stanwood, 178 Ore. 306, 167 P.2d 315 (1946). The court stated at 319: "... the validity of an order striking a pleading pursuant to the statute under consideration is restricted to those cases where the failure to answer obviously withholds a fact or facts *material* to his adversary's case and is limited to the effect

(a) A defendant who refused to make discovery may be adjudged in contempt of court and punished.[17] (Citations omitted.)

(b) The court may, as "other consequences, ... make such orders in regard to the refusal as are just ..."; but cannot deny to defendant his right to defend the action as "mere punishment." Defendant cannot be deprived of a constitutional right.

(c) The purpose of the court's order shall be to balance the rights of the parties so that the contemptor does not profit or benefit from his contemptuous act.

(d) The court may presume and infer, as a matter of law, that the evidence withheld by defendant would if produced, contradict the contemptor's contentions and support the contentions of plaintiff. The truth of matters thus presumed to be established may result in drastically limiting defendant's proof or in striking all or part of pleaded defenses ....[18]

The court summarily applied the foregoing principles. Watson's refusal to answer the interrogatory was clearly intentional. Had he identified the alleged source of his information, the plaintiffs could have produced him for impeachment purposes. A defendant, in an action for damages for publication of an article libelous *per se*, may introduce evidence in mitigation of damages.[19] The court stated:

> If, upon remand of the instant case, the trial court indulges the presumption that defendant Watson, by his refusal to answer, admits that there was no such informant, or that the unidentified person did not make the statement, then the trial court is free to reject any and all evidence of mitigation of damages or other proffered defenses which are relevant to or have any reasonable connection with the existence of the alleged informer.[20]

A close analysis of the court's disposition sustains the conclusion that Rule 37 was properly interpreted and applied. The default judgment entered by the trial court can only be construed as punishment for contempt. The gist of the unanswered interrogatories related to the damage issue only. The existence of the alleged informer concerns the case to the extent that such fact is relevant to the mitigation of

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that ensues from any reasonable presumption which may be drawn from the refusal to discover such fact or facts." (Emphasis added.) A discovery request must entail material facts; otherwise, such request will be open to objection. I.E.S. Corporation v. Superior Court, 44 Cal. 2d 559, 283 P.2d 700 (1955); Elster v. American Airlines, Inc., 34 Del. 505, 106 A.2d 516 (1954).

[17] State v. Estill, 55 Wn.2d 576, 349 P.2d 210 (1960); Keller v. Keller, 52 Wn.2d 84, 323 P.2d 231 (1958).

[18] Mitchell v. Watson, 158 Wash. Dec. 194, 204, 361 P.2d 744, 750 (1961).

[19] Farrar v. Tribune Publishing Co., 157 Wash. Dec. 447, 358 P.2d 792 (1961).

[20] 158 Wash. Dec. at 205, 361 P.2d at 750-51.

damages. Since the desired answers are relegated to a negligible position, striking of defendant's answer and foreclosure of all the issues against him is condemnation without a prior hearing. This procedure is repugnant to the fourteenth amendment and void for lack of due process. Application of the lesser sanction, depriving defendant from introducing evidence concerning the alleged informer, is consonant with constitutional principles. In this regard Watson's contumacious conduct is treated as an admission that the alleged informer does not exist. This is a presumption in which the court can constitutionally indulge. However, before such an admission can be presumed, such fact must be significant to an issue in the case.[21]

FUTURE APPLICATION OF WASHINGTON RULE 37

Although counsel moves under Rule 37, the application of the sanctions is primarily left to the discretion of the trial judge.[22] It is the trial judge's duty to administer the rule so that its full impact is felt. Rule 37 was promulgated to assure that the discovery process would function properly. Sanctions are provided to discourage and minimize noncompliance. In order for the process to work properly, the sanctions imposed must be adequate to effectively discourage noncompliance. The trial judge must be advised of the context in which the noncompliance arises. He must know fully the circumstances relating to the noncompliance. The importance of the facts requested must be balanced against the reasons for noncompliance.

Rule 37 has been plagued with an apparent doctrinal impediment. The keynote of the new rules is "get to the trial on the merits." A case should not turn on a procedural technicality. However, Rule 37 makes such a result possible by default or dismissal. The rules have attempted to remedy this conflict by allowing the trial judge discretion to select from a broad array of sanctions of graduated severity. Yet, while the courts have been armed with such sanctions, it appears that many violations of discovery procedure have been excused.[23] The trial judge instilled with the spirit of getting to trial on the merits has lost sight

[21] Otherwise such an interrogatory would be open to objection. See cases at note 16, *supra*.

[22] Mitchell v. Johnson, 274 F.2d 394 (5th Cir. 1960); Craig v. Far West Eng'r Co., 265 F.2d 251 (9th Cir. 1959); White Pine Copper Co. v. Continental Ins. Co., 166 F. Supp. 148 (D. Mich. 1958); Interchemical Corp. v. Uncas Printing & Finishing Co., 39 N.J. Super. 318, 120 A.2d 880 (1956); United States v. Costello, 222 F.2d 656 (2d Cir. 1955); Michigan Window Cleaning Co., v. Martino, 173 F.2d 466 (6th Cir. 1949); Valenstein v. Bayonne Bolt Corp., 6 F.R.D. 363 (D.N.Y. 1946).

[23] Austin Theatre, Inc. v. Warner Bros. Pictures, Inc., 22 F.R.D. 302 (D.N.Y. 1958); Grimmett v. Atchison, Topeka & Santa Fe Ry., 11 F.R.D. 335 (D. Ohio, 1951).

of the purpose of discovery. "The principle result is that Rule 37 has been relegated too often to the station of 'merely another procedural technicality' to be lived with or tolerated, rather than respected and observed."[24] On the other hand, there is the overbearing judge who abuses his discretion by arbitrarily imposing harsh sanctions. The whole discovery process has suffered as a result of such radical application.

Discovery occupies an integral part of the judicial process under the new rules.[25] If the discovery process[26] is to function properly, Rule 37 must be conscientously utilized to its fullest extent. Timely application of firm but reasonable sanctions the keynote for the proper implementation of Rule 37.

RICHARD H. WILLIAMS

REAL PROPERTY

Abolition of Rule in Shelley's Case—Testamentary Dispositions. The state of title to an undetermined amount of realty in Washington was put in question by the Washington court's decision in *Rubenser v. Felice*.[1] That case marked the end, in Washington, of an ancient and troublesome rule of law—the Rule in Shelley's Case[2]—in testamentary dispositions of realty.

The *Rubenser* facts clearly fall within the area subject to the operation of the Rule in Shelley's Case. The effect of the Rule was stated by the Washington court in *Shufeldt v. Shufeldt*[3] as follows:

> [I]f an estate for life is granted by an instrument and the remainder is limited by the same instrument, either mediately or immediately, *to the heirs of the life tenant,* the life tenant takes the remainder as well as the life estate.[4]

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[24] *Recent Innovations to Pretrial Discovery Sanctions: Rule 37 Reinterpreted.* 1959 DUKE L. J. 278.

[25] Underwood v. Maloney, 16 F.R.D. 3 (D. Penn. 1954). Hickman v. Taylor, 329 U.S. 495 (1947); Coca Cola Co. v. Dixi-Cola Laboratories, 30 F. Supp. 275 (D. Md. 1939).

[26] See WASH. RPPP 26-37.

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[1] 158 Wash. Dec. 857, 365 P.2d 320 (1961).

[2] Wolfe v. Shelley, 1 Co.88b, 76 Eng. Rep. 199 (1581). The Rule was stated and applied as early as 1324 in Abel's Case, Y.B. 18 Ed.II 577, but derived its name from the case in which it was considered to have been best explained. 1 AMERICAN LAW OF PROPERTY § 4.40 (Casner ed. 1952).

[3] 130 Wash. 253, 227 Pac. 6 (1924). The Rule was not applicable to the *Shufeldt* facts, but the court made the unqualified statement that the Rule was in force in Washington. The court in that case was concerned with the construction of a will, as it was in the *Rubenser* case.

[4] *Id.* at 268, 227 Pac. at 11. The Rule is also often known as the rule against remainders to the grantee's heirs.

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