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Real Property—Aboltion of Rule in Shelley's Case—Testamentary Dispositions

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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.

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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.

The Rule operates to *locate* the remainder interest in the grantee-life tenant. Then, independent of the Rule, the common law doctrine of merger fuses the life estate and the remainder,[5] giving the grantee not a life interest, but the full fee estate. The heirs of the grantee take nothing by the instrument.

In 1936 Frank Geissler died testate, devising a life estate to his widow, Teresa Geissler, with the remainder in fee to her heirs. In the event of her remarriage, the property was to go in fee to St. Joseph's Parish, in Odessa, Washington.[6]

The will was probated in Washington with ancillary administration in Montana. The Montana decree distributed the property located there to Teresa in fee, in accordance with the Rule in Shelley's Case. This distribution was approved and confirmed by the Lincoln County, Washington, decree. The Washington State Tax Commission also treated all the property under the will as having passed to Teresa in fee. She was charged with the entire inheritance tax; no apportionment to the remaindermen was made.

At Teresa's death in 1960 she devised the property to the respondents, who were not her heirs. Teresa's heirs then brought an action to quiet title against the respondents. The superior court applied the Rule in Shelley's Case, and determined that Teresa had taken a fee simple interest and that her devisees, not her heirs, received the fee at her death.

From this decision the heirs appealed to the supreme court and obtained a reversal, the court holding that by virtue of legislative abolition the Rule in Shelley's Case does not apply to devises in Washington. The court confined itself to the statute[7] and made no decision as to the applicability of the Rule to conveyances by deed or in trust.

The Rule in Shelley's Case has been almost uniformly considered to be a rule of law, or of property, and not merely of construction.[8] Because it is a rule of law it is strictly applied to wills and deeds and

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[5] Where another vested estate is interposed between the life estate and the remainder to the grantee's heirs, merger will not occur until that vested estate is removed. However, the Rule in Shelley's case still will bring the remainder up to the life tenant, although he will not have a fee simple until his two estates can merge. That was not the situation in *Rubenser*. 3 SIMES & SMITH, FUTURE INTERESTS § 1556 (2d ed., 1956).

[6] The facts set out in this Note are from the briefs of the parties and from the report of the case.

[7] The statute so construed is RCW 11.12.180, a section of the probate code. See note 11, *infra*.

[8] Finley v. Finley, 324 S.W.2d 551 (Tex. Sup. Ct. 1959). The scope of the acceptance of the Rule as one of property is indicated in 3 SIMES & SMITH, FUTURE INTERESTS § 1544 (2d ed., 1956).

allows no room for judicial construction of the testator's or grantor's intent. It was created in feudal England to serve a dual function. The ostensible purpose was to promote the free alienability of land, by causing the whole fee to vest as quickly as possible. Probably a more basic reason was the protection of the real property interests of the feudal lords, who greatly influenced the courts of that day.[9]

The greatest advantage in the ownership of land was realized in the form of tenurial incidents, which amounted to taxes imposed by the feudal lord. These incidents of ownership of land brought large sums of money to the landlord and were a vital part of the ownership. As long as the land *descended* to successive owners, that is, followed the tenurial line of descent from heir to heir, these valuable services remained attached to the land. When the line of descent was broken, however, and the land was taken by *purchase* these services no longer accrued to the lord. The operation of Shelley's Rule was to prevent this separation of tenurial incidents from the feudal ownership by making the land pass by descent rather than by purchase. To hinder the efforts of testators and grantors in avoiding the application of the Rule it was made a rule of law rather than a rule of construction, and the intention of the testator or grantor became ineffective when the circumstances called for application of the Rule.[10]

When the common law was imported to the United States, the Rule in Shelley's Case came with it. From the start, the Rule was out of its element, due to the very great difference in the system of land ownership in this country. The Rule was created in the context of the feudal system. Feudal ownership of land never substantially developed as a property system in the United States, and the tenurial incidents protected by the Rule were never here to protect. The Rule remained, however, due in part to the over-all acceptance of the common law and the doctrine of stare decisis, and in part to the feature of the Rule which made land more freely alienable. Land was much more marketable

[9] SIMES, FUTURE INTERESTS § 21 (1951).

[10] In line with the formalism of legal procedures of the day, the determination of whether an instrument conveyed title by descent or by purchase depended largely on the language employed by the conveyancer. If he chose words of limitation (*e.g.*, to *X* for life, then to his heirs) the transfer was by way of descent, and the tenurial services were preserved. If he chose words of purchase (i.e., to *X* for life, then to his children, or other specific person(s)) the transferee took by purchase, or devise, and the services were cut off. While it was, thus, quite simple to take by purchase and avoid Shelley's Rule, as a practical matter the distinction was not frequently made by conveyancers, for this same formalism required words of inheritance for the transfer of a fee simple; words of inheritance were also words of descent (to *X* and his heirs) and these words were commonly known to and used by conveyancers. MOYNIHAN, REAL PROPERTY, 17, 18 (1940).

when the devisee or grantee received a fee simple interest than when the fee was divided so that there was a life tenant and a contingent remainderman.

Because the Rule is thought to be useless today, and even dangerous for the unwary draftsman, it has been abolished by statute both in England[11] and in the great majority of the United States.[12] Whether it had been abolished in Washington was an unresolved question until *Rubenser v. Felice* was decided, although the general impression seems to have been that it had not been abolished.[13] Few will mourn the passing of the Rule, but the circumstances surrounding its dispatch may cause some very real problems.

In determining that the Rule in Shelley's case has been statutorily abolished, the court interpreted RCW 11.12.180,[14] a section of the probate code pertaining to estates for life and to remainders. The decision will not affect the existence or application of the Rule as to deeds or trust agreements, and case law has clearly established that in the latter situations, the Rule is in force in Washington.[15]

The court's analysis of this statute followed an historical line. In 1854 the Territorial legislature enacted the following provision relating to wills:

> If any person, by last will, devise any real estate to any person, for the term of such person's life, and after his or her death, his or her children, or heirs, or right heirs in fee, such devise shall vest an estate for life only in such devises, and remainder in fee simple in such children.[16]

The court saw in this provision an "unmistakable" legislative intent to abolish the Rule.[17]

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[11] Law of Property Act, 1925, 15 & 16 Geo. 5, C. 20, § 131, p. 661.

[12] 37 American jurisdictions have statutorily abolished the Rule, at least in part, through 1958. 1 AMERICAN LAW OF PROPERTY § 4.51 (Casner ed. 1952; Supp. 1958). Washington is not included in this list.

[13] Cross, *The Rule in Shelley's Case in Washington*, 15 WASH. L. REV. 99 (1940). There is no statute in Washington which expressly abolishes the Rule, either by description or by name. The method of statutory abolition in many other states has been to state simply that the Rule in Shelley's Case is herewith abolished and to enact a provision which gives a result opposite to that of the Rule when it would otherwise have been applied. The few Washington cases which mention the Rule seem to indicate that it had not been abolished. These cases are discussed below.

[14] "If any person, by last will, devise any real estate to any person for the term of such person's life, such devise vests in the devisee an estate for life, and without the remainder is specially devised, it shall revert to the heirs at law of the testator." Wash. Sess. Laws 1917, ch. 156, § 40.

[15] In Fowler v. Wyman, 169 Wash. 307, 13 P.2d 501 (1932), the court applied the Rule in Shelley's Case to a conveyance by deed. Fowler v. Lampher, 193 Wash. 308, 75 P.2d 132 (1938) indicates that the Rule is also applicable to trust agreements.

[16] Sess. Laws 1854, § 45.

[17] It is at least questionable whether section 45 of the Laws of 1854 was intended to abolish the Rule. That section provides that if a life estate be devised and the fee

This section was repealed in 1860, however, and was replaced by the following provision:

> "If any person, by last will, devise any real estate to any person for the term of such person's life, such devise vests in the devisee an estate for life, and without the remainder is specially devised to the heirs of said devisee, it shall revert to the heirs at law of the testator."[18]

It is at this point, chronologically, that the devisees of Teresa Geissler presented a key argument in favor of the applicability of the Rule in Shelley's Case. Conceding, without admitting, that the 1854 section did in fact abolish the Rule as a common law rule in Washington, the respondents argued that the repealer section in the 1860 code[19] expressly repealed section 45 of the 1854 code and reestablished the Rule in Shelley's Case.

This left two questions for the court's resolution: (1) whether the

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limited over to the *"children,* or heirs, or right heirs at law," one, and possibly two, consequences follow: (1) the devisee is to get only a life estate and (2) that there "shall *vest*... remainder in fee in such *children."* (Emphasis added.) It is a fair interpretation that this statute did no more than state an established common law concept, and that it has no effect on a limitation to the "heirs or right heirs at law" of the devisee. Such an interpretation would be reasoned as follows: (1) the common law provided that when the owner of the fee devised a lesser estate than he owned, that part of the fee which was not devised was passed by the residuary clause of the devisor's will as part of his estate. The devisee took only what he was given. Of course the devisor was free to do with the reversion as he pleased, except as he was restricted by such rules as that in Shelley's Case. But the Rule in Shelley's Case has no effect on the life estate itself; it acts only on the future interest.

(2) Up to this point, the 1854 statute is merely a codification of the common law, namely that when one is given a life estate, all that he takes is a life estate. As to the remainder provision of the statute, this too is merely a codification of the common law rules regarding the vesting of remainders. The statute provides no more than that where the remainder is limited to the *"children,* heirs or right heirs at law" of the devisee it "shall *vest*... in fee simple in such *children."* (Emphasis added.) It does not provide that any remainder shall vest in the heirs or right heirs at law, but only in such children as may be named remaindermen. It is improper to imply that the remainder was also intended to vest in the heirs, since heirs can take only a *contingent* remainder, and not a *vested* remainder. This is because vested remainders can exist only when the remaindermen have been ascertained, and heirs are not ascertainable at the time of the transfer to the life tenant; living persons have no heirs.

(3) Also to be noted is the difference in the result when the remainder is limited over to the *heirs* of the life tenant-devisee, and when it is limited to his *children.* The word "children" is, at common law, a word of purchase and the Rule in Shelley's Case does not operate when words of purchase are used to devise the remainder. See note 10, *supra.* As is mentioned below, it is an easy matter to avoid the Rule; this is one of the methods of avoidance.

It seems evident that the 1854 statute was only a codification of common law rules, and not intended as a device by which to abolish any common law rule. As pointed out by the attorneys for the heirs of Teresa, the Oregon court has held the Rule in Shelley's Case to have been abolished by the 1854 statute. That was an Oregon territorial statute and Washington was then included in the Oregon Territory. Brief of Appellants, p. 30-35. The Washington court in *Rubenser* did not however mention Oregon's treatment of the statute, nor the divergent histories of subsequent legislation in the two states.

[18] Sess. Laws of 1860, ch. II, § 37.

[19] Sess. Laws of 1860, ch. II, § 388.

repeal of a statute which abolishes a rule of common law results in the reestablishment of the common law rule,[20] and (2) whether the 1860 provision in section 37 continued the abolition of the Rule in Shelley's Case. By finding an affirmative answer to the second question, that the 1860 provision did continue the abolition of the Rule, the court avoided the first question.[21] When the court arrived at the current statute, it had no trouble finding that it also abolished the Rule.[22] The only Washington case mentioned in the majority opinion was the *Shufeldt* case.[23] That decision was cited only for its statement of the Rule.

The pertinent Washington case law was discussed in the dissenting opinion. Although none of the four Washington cases actually apply the Rule to devises, they seem to indicate strongly that it is applicable to its full common law extent.[24] Each of these cases was decided subsequent to 1917, so that the legislative history of RCW 11.12.180 was fully available in each case.

In addition to providing an accurate statement of the Rule, the *Shufeldt* case made the unqualified statement that the Rule is in force in Washington.[25] Although the factual situation did not call for application of the Rule, one would not expect the court to say, even in a dictum, that the Rule was in force unless it fully believed that it was.

Five years later the Rule was applied to a deed in *Fowler v. Wyman*.[26] No distinction was made by the court between the application of the Rule to deeds and to wills.

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[20] The weight of authority is that the common law is revived when the statute which abolished it is repealed. 15 C.J.S. *Common Law* § 12b (1939).

[21] The language of the 1854 and 1860 statutes was substantially different. See text, *supra*. However, once the court had determined that the 1854 provision abolished Shelley's Rule the same determination regarding the 1860 provision was mandatory, since the later statute omitted the reference to children of the devisee and also the provision that the remainder shall *vest* in anyone. The 1860 statute probably comes closer to abolishing the Rule than does the 1854 statute. However, the better construction of either statute is that they are no more than codifications of the existing common law and were not intended to abolish any common law rules. It is difficult to understand why the legislature would abolish the Rule as to wills and leave it effective as to deeds and trust agreements.

[22] RCW 11.12.180. The only change from 1860 to 1917 was the omission of the words "to the heirs of said devisee" in reference to the special devise of the remainder. This seems to remove even the implication that a remainder may be devised to the heirs of the devisee, leaving only a restatement of the ordinary common law rule that where the owner of the fee devises a lesser estate without providing for the remainder, there is a reversion created in favor of the devisor's heirs.

[23] 130 Wash. 253, 227 Pac. 6 (1924).

[24] A complete discussion of these cases, insofar as they affect the Rule in Shelley's Case in Washington is to be found in Cross, *The Rule in Shelley's Case in Washington*, 15 WASH. L. REV. 99 (1940), *supra* note 13. A brief recapitulation is given here for convenience.

[25] 130 Wash. 253, 268, 227 Pac. 6, 11 (1924).

[26] 169 Wash. 307, 13 P.2d 501 (1932).

The Rule was discussed in a will context again in *In re Johnson's Estate*,[27] although again it was not applied because the factual situation did not call for its application.[28] The court's unqualified statement that the Rule is in force in Washington has been referred to as being "about as strong as possible without a direct holding that the rule is applicable to devises by will."[29]

Fowler v. Lanpher[30] involved a trust agreement and the case seems to indicate that the Rule is to be applied to transfers effected via trust arrangements. The authority of this case is weakened somewhat by the improper application of the Rule to the particular fact pattern. The important thing, however, is that the court showed no hesitancy in holding the Rule to be in force in Washington.

Taken together, these four cases indicate that prior to *Rubenser* the Rule in Shelley's Case was in force in Washington, to its full common law extent. These cases were decided in full view of the same statutory authority which was involved in the *Rubenser* Case. No distinction had been made indicating any difference in application of the Rule as between wills and deeds or trust agreements. The preceding analysis of these statutes and the "blanket" adoption of the common law in Washington indicate that these four prior cases were correct in stating that the Rule is in force in Washington. The court did not overrule any of these cases.

Some confused situations regarding title to land may arise as a result of the *Rubenser* decision. Some important questions of real property law have also been created. The most immediate effect of the decision is the creation of uncertainty as to the ownership of land conveyed in fee by a devisee-life tenant under the impression that he had a fee interest by the operation of the Rule in Shelley's Case. From all indications, reliance on the existence of the Rule would have been expectable and reasonable.[31]

[27] 192 Wash. 439, 73 P.2d 755 (1937).

[28] The devisee of a life estate was given an equitable interest via a testamentary trust, while the heirs were given a legal interest. As discussed below, the operation of the Rule depends on the two interests being of the same quality, that is, both legal or both equitable.

[29] Cross, *The Rule in Shelley's Case in Washington*, 15 WASH. L. REV. 99 (1940).

[30] 193 Wash. 308, 75 P.2d 132 (1938).

[31] Indeed, one of appellant's own attorneys had drawn the Frank Geissler will and had filed the Washington state inheritance tax report, in which he *denied* a life estate with remainder over. Instead, the report provided that Teresa Geissler had a fee estate; this is the basis on which the inheritance tax was assessed and paid. Brief for Respondents, p. 84. Did the testator originally intend that there should be no life estate with remainder over to appellants, the heirs of Teresa; or was the appellant's attorney of the opinion that the Rule was in fact in force when the will became effective and the inheritance tax report became due? There do not seem to be any other alternatives.

As the dissenting opinion pointed out, the *Rubenser* situation presents an excellent example of the type of problem which can be expected to arise. In 1945 Teresa Geissler, under the illusion that the Rule in Shelley's Case had operated to provide her with the fee simple estate, conveyed some of the land (which was not involved in the *Rubenser* litigation) to a third party by a warranty deed. The third party also obtained a quit-claim deed from St. Joseph's Parish, to whom the land was to go in the event of Teresa's remarriage. Under the court's decision in *Rubenser,* Teresa clearly breached the covenants of seisen and of the right to convey which she gave in 1945. It also appears that the person to whom the deed was given actually received only an estate for Teresa's life and that the statute of limitations has run against the grantee's cause of action for damages for the breach of these covenants.[32]

Actions for breach of the covenants of quiet enjoyment and of warranty have not been barred by the statute of limitations, since the breach did not occur until the grantee was disturbed in his possession of the land. However, under the probate code of Washington, the grantee is probably barred from his actions by the "nonclaim" statute for failure to file his claim within the statutory six months following publication of notice by the executor.[33]

At this point another problem is raised. It is settled in Washington,[34] that the statute of limitations does not run against the remainderman while the life tenant is living. This precludes the acquisition of title by adverse possession against the remainderman. *McDowell v. Beckham* expressly covers the situation of the grantee from Teresa Geissler:

> remaindermen . . . are not bound to assert their title . . . during the life of the . . . life tenant. . . . A remainderman is not bound to take notice of, nor is he bound by, deeds made by the life tenant subsequent in time to the creation of his interest.[35]

This holding is applicable to all of the adverse possession statutes;[36] therefore Teresa's grantee cannot claim his title through adverse pos-

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[32] RCW 4.16.040 requires action arising upon a contract to be brought within six years of the breach.

[33] RCW 11.40.010. There apparently are no cases on this particular point. However, these actions constitute contingent claims and quite probably are within the coverage of the statute. See Davis v. Shepard, 135 Wash. 124, 237 Pac. 21 (1925).

[34] McDowell v. Beckham, 72 Wash. 224, 130 Pac. 350 (1913).

[35] *Id.* at 228, 229, 130 Pac. 352.

[36] RCW 4.16.020, 7.28.050, .080. The subject of adverse possession in Washington is fully discussed in Stoebuck, *The Law of Adverse Possession in Washington,* 35 WASH. L REV. 53 (1960).

session until the statutory period has run from the life tenant's death in 1960. It appears that he is subject to an action in ejectment by the heirs of Teresa. The immediate question is: How many other titles to land are suddenly open to attack on this basis?

Another important effect of the *Rubenser* decision is its creation of a split in the applicability of the Rule in Shelley's Case to wills, on the one hand, and to deeds and trust agreements, on the other. *Fowler v. Wyman*[37] definitely established the Rule as to deeds. *Rubenser* cannot abrogate the Rule in that context, since the decision rests on the interpretation of a wills statute. The continued existence of this split is very likely to result in confusion and unintended results.

The most desirable course would be statutory abolition of the Rule in Shelley's Case, to the full extent of its common law scope. It is unlikely that any remedy will come about through the overruling of the precedent cases, in view of the hesitancy of the court to disturb them.

However, even if the Rule in Shelley's case is in force, the draftsman can easily avoid it and protect his client from the present uncertainty and unsettled state of the law. The operation of the Rule depends on the existence of four criteria.[38] If any of the four are not present the Rule will not operate. Examples of how the Rule may be avoided by omitting one of the essential elements listed in footnote 38 are, respectively:

1. By granting a term for a number of years to the first taker, rather than a life estate, the conveyancer can avoid giving a freehold interest to the first taker. Since it is impossible to estimate a person's remaining years, this is not the most effective or practical method of avoiding the Rule.
2. By conveying a life estate to the first taker in one instrument and transferring the reversion to heirs in a second instrument, there is no remainder and Shelley's Rule is not applicable.[39]
3. By conveying a life estate to the first taker, with an executory limitation over to his heirs, no remainder is created, and the Rule

[37] 169 Wash. 307, 13 P.2d 501 (1932).

[38] These requirements are described in Note, 19 MD. L. REV. 43, 45-46 (1959):
"(1) there must be freehold estate in the ancestor... (life tenant);
(2) both the devise or grant to the ancestor (life tenant) and the limitation to his heirs must be contained in the same instrument;
(3) the remainder must be to 'heirs,' in the technical meaning of that term as a word of limitation, not as a word of purchase; and
(4) the interest of the ancestor and that limited to the heirs must both be of the same quality (that is, either both legal or both equitable)."

[39] 1 AMERICAN LAW OF PROPERTY § 4.45 (Casner ed., 1952).

does not apply. Because a single instrument can be used with this device, it is probably the easiest method of avoiding the Rule. An example of the language which will create a life estate with an executory limitation over is "To *X* for life and one day after death of *X* then to *X's* heirs."[40] Another method is by using words of purchase, such as ". . . at the death of the life tenant, then to his 'children,' 'son,' 'daughter,' etc.," rather than by words of limitation, such as "heirs" or "right heirs at law."[41]

4. By conveying an equitable estate to the life tenant by use of a trust (deed), while limiting over a legal remainder to the heirs, the two interests created are of different qualities. This difference in the quality of the two interests has been held to preclude the operation of the Rule.[42]

These techniques do not, of course, afford any protection for the draftsman who fails to distinguish between wills and deeds.

The Rule in Shelley's Case serves no purpose today which cannot be as effectively served by a direct transfer of the fee simple interest, and it has often worked against the real purpose of the transferor. Indeed, Frank Geissler's purpose would have been thwarted had the court not held the Rule to have been abolished. He gave Teresa a life estate to prevent her from selling her only means of support, as indeed she attempted to do with part of the land.[43]

A solidly entrenched rule of common law should be clearly abolished by statute. Its abolition should not be left to the tenuous and doubtful statutory construction which was employed in *Rubenser*. Sound legislation will solve the problems created and will permit effective planning and drafting of wills and other conveyancing instruments. The necessary legislation is brief and simple; an excellent example is provided by the Illinois statute.[44] There is no good reason for delaying the passage of such legislation; there are many good reasons for its present enactment.

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[40] *Id.* at § 4.43.

[41] See related discussion at note 17, *supra*.

[42] *In re* Johnson's Estate, 192 Wash. 439, 73 P.2d 755 (1937).

[43] Brief of Appellants p. 16, 17.

[44] ILL. REV. STAT. ch. 30, § 186: "Abolition of rule. The rule of property known as the rule in Shelley's Case is abolished." ILL. REV. STAT. ch., § 187: "Application of act. This Act shall apply only to wills of decedents dying after the effective date of this Act and to deeds, agreements and other written instruments executed and delivered after the effective date of this Act."

Nothing is left to the imagination by such a statute, nor is anyone taken by surprise. The Rule is abolished as to all its former application and not just as to wills.