The Doctrine of Worthier Title and the Statutory Limitations in Pennsylvania

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NOTES

THE DOCTRINE OF WORTHIER TITLE AND THE STATUTORY LIMITATIONS IN PENNSYLVANIA

The worthier title doctrine, as developed in the common law and by the courts of equity, prior to the statute which abrogated that doctrine in England in 1833,¹ may be summarized as follows:

A—If an owner of land in fee simple sought to convey a life estate or an estate tail, with a remainder to the grantor's heirs, the remainder was void and the grantor had a reversion in fee simple.² A similar rule applied in the case of wills, so that, if the testator devised an estate in real property to his heirs, which

¹Stat. 3 & 4 Wm. IV, c. 106, sec. 3 (1833).
²1 Tiffany Real Property (2nd. ed.)—Sec. 130; 1 Restatement of Property (1936) Sec. 30c; Pibus v. Mitford, 1 Vent. 372 (1674); Smith Executory Interests, p. 205; Thompson, Real Property, vol. III, Sec. 2110; Washburn, Real Property, (2nd, ed.) Sections 1390 and 1525; Co. Litt. 22b. See also 41 Yale Law Journal 913 (1932); 29 Columbia L. Rev. 837 (1929); 1 Simes, Law of Future Interests, p. 259.
was the same in quality and of the same quantum as that estate in the lands which the heirs would have taken by descent, had there been no devise to such heirs, the provision in the will was void, the heir was regarded as acquiring the land by descent and not by purchase.\(^3\)

B—This was a rule of law, primarily based upon the feudal system and calculated to benefit (a) the medieval landlords—in securing to them the feudal incidents of wardship and marriage which attached to the transmittal of real estate by descent, and which were denied them when the property passed by purchase;\(^4\) (b) creditors of the testator—for the land was an asset in the hands of the heir for the benefit of the testator’s creditors, if it passed by descent and was not if it passed by devise.\(^5\) Secondarily, the doctrine of worthier title is based upon the social tradition which favored the descent of property to blood heirs, as being ‘worthier’ and more consistent with the prestige of the landowning classes. Moreover, the heir did not become a new stock of descent from which subsequent heirs would trace their inheritance, as would have been the case if the heir had taken by purchase.\(^6\)

C—The imposition of charges or incumbrances upon the land, such as debts,\(^7\) legacies,\(^8\) or annuities,\(^9\) did not prevent the rule operating for although the quantity that the heir gets is materially lessened under the grant or devise, yet the quality or the nature of the tenure is the same. The postponement of the heir’s enjoyment until the termination of any number of particular estates, as an estate for life, or an estate pur autre vie, did not affect the operation of the rule.\(^10\)

D—It was a rule of property, binding upon the heir, and applicable irrespective of any consent or election on his part, and irrespective of the intent of the testator.\(^11\)

E—The ‘quality’ and ‘quantum’ of the estate are the determining elements; not the quantity in the sense of proportion or amount of value thereof. The principal test is whether the estates are identical in quality. If so, the devise

\(^3\) Chaplin v. Leroux, 5 Maule & S. 14 (1816); Co. Litt. 12b n(2) by Hargrave (1787); 2 Tiffany, Real Property, Sec. 1893; Washburn, Real Property, (6th ed.) Sec. 1525; 1 Simes, Law of Future Interests, p. 259; “Doctrine of Worthier Title,” 24 Ill. Law Rev. 627 (1930); 46 Harvard L. Rev. 993 (1933); 17 Minn. L. Rev. 346 (1933).

\(^4\) 24 Ill. L. Rev. 627; 1 Simes, Law of Future Interests, 260; 46 Harv. L. Rev. 993; Co. Litt 87b n(1) by Hargrave.

\(^5\) Chaplin v. Leroux, 5 Maule & S. 14 (1816); Godolphin v. Abingdon, 2 Atk. 57 (1740); 1 Simes, Law of Future Interests, 260; 46 Harv. L. Rev. 993; 24 Ill. L. Rev. 346.

\(^6\) Simes, Law of Future Interests, 260; Godbold v. Freestone, 3 Lev. 406; Ellis v. Smith, 1 Ves. Jr. 10 at 17 (1734); 24 Ill. L. Rev. 346; 46 Harv. L. Rev. 993.

\(^7\) Clark v. Smith, 1 Salk. 241 (1698); Ellis v. Page, 7 Cush. (Mass.) 161 (1831); 2 Tiffany Real Property, 1893; Kinney v. Glasgow, 53 Pa. 141 (1866); 46 Harv. L. Rev. 993.

\(^8\) Clark v. Smith, 1 Salk. 241 (1698).

\(^9\) Beiderman v. Seymour, 3 Beav. 368 (1841); 46 Harv. L. Rev. 993.

\(^10\) 2 Tiffany Real Property, 1893; 1 Simes, Law of Future Interests, 263; 46 Harv. L. Rev. 993.

\(^11\) 24 Ill. L. Rev. 346; 1 Simes, Law of Future Interests, 264; 2 Tiffany Real Property, 1893.
to the heir is inoperative, if the quantum in each case is the same. More precisely, it is a question of duration. The operation of the rule is precluded where the estate that is granted or devised is a lesser estate than that which the grantor or testator possessed.\textsuperscript{12}

The doctrine of worthier title is so deeply rooted in the common law, being based on a long and unbroken line of precedents running back to the age of Elizabeth, that in the absence of express legislation limiting the doctrine, the rule still applies. The rule has been adopted in the United States,\textsuperscript{13} and the courts use it to the extreme limit of its application although the original and primary reasons for the creation of the rule have disappeared. The New York courts, however, interpret the rule as a rule of construction as distinguished from a rule of law.\textsuperscript{14} The abolition in 1660\textsuperscript{15} of the fruitful incidents of feudalism destroyed the main objective of the doctrine, yet, the dogma of the common law remained, that where the same estate is devised to the heir that he would take under the law, the devise is void, for he takes by his worthier title as heir.\textsuperscript{16} So too, devised lands have been made subject to the payment of the testator's debts, and it is immaterial as to whether the land passes by purchase or descent.\textsuperscript{17} Likewise, the Intestate Act of 1917\textsuperscript{18} abolished the "last purchaser" doctrine in Pennsylvania. Obviously, the real pragmatic considerations which occasioned the development of the worthier title doctrine have ceased to exist.

STATUS OF THE WORTHIER TITLE DOCTRINE IN PENNSYLVANIA

Despite the inappropriateness of the doctrine of worthier title to the real property law of Pennsylvania, the courts of this state did not hesitate to incorporate the doctrine into our law. In the case of Selfridge's Appeal,\textsuperscript{19} Chief Justice Gibson affirmed the doctrine of worthier title:

"Whenever exactly the same interest passes by law that would pass by the will, the devisee takes by descent, and the testator may be said, in language strictly technical, to have died intestate as to the particular land."

\textsuperscript{12}Ballard v. Griffin, 4 N. C. 237 (1815); Whitney v. Whitney, 14 Mass. 88 (1817); 24 Ill. L. Rev. 346.

\textsuperscript{13}Akers v. Clark, 184 Ill. 136 (1900); Biver v. Martin, 294 Ill. 488 (1920); Alexander v. DeKermel, 81 Ky. 345 (1883); King v. Durham, 31 Ga. 743 (1861); Pryor v. Castleman, 9 Ky. 967 (1888); Whayne v. Davis, 23 Ky. L. 2174, 66 S. W. 827 (1902); Robinson v. Blankenship, 116 Tenn. 394 (1906); Loring v. Elliott, 82 Mass. 568 (1860); Doctor v. Hughes, 225 N. Y. 305, 122 N. E. 221 (1919); Glen v. Holt, (Tex. Civ. App.) 229 S. W. 684 (1921); In re Brolasky’s Estate, 302 Pa. 439, 153 A. 739 (1931).

\textsuperscript{14}Doctor v. Hughes, 225 N. Y. 305, 122 N. E. 221 (1919).

\textsuperscript{15}Stat. 12 Car. II, c. 24 (1660).

\textsuperscript{16}See Coke “Institutes”, ‘12 B. note 63.

\textsuperscript{17}Fiduciaries Act, 1917, June 7, P. L. 447, Sec. 13 (a).

\textsuperscript{18}Intestate Act, ‘1917, June 7, P. L. 429, Sec. 13.

\textsuperscript{19}W. & S. 55 (1845); See also, Case of Jonas Hartman’s Estate, 4 Rawle 39 (1833); In re Gardiner’s Estate 4 Pa. 502 (1846).
In *Kinney v. Glasgow*, the court said:

"At common law a devisee who takes by will the same estate that would have been cast on him by descent, is in by descent and not by purchase."

In *Root's Estate*, a case in the Orphans' Court, there was a conveyance of real estate by the decedent in his life time to the President and Fellows of Yale College, in trust to permit the decedent to use and occupy the same and to receive the rents during his life, reserving to himself the power of appointment by will and in the default of the exercise thereof upon the further trust to convey the premises to his heirs in fee simple. The decedent died without having exercised the power of appointment. Upon objection by the heirs of the decedent to an order to sell the real estate for the payment of debts, the court held that the heirs at law of the decedent took by descent and not by purchase and that the estate was therefore liable for the debts of the decedent. The settlor, being the remainder, could dispose of this interest by will. In a recent case, *Brolasky's Estate*, Justice Simpson took occasion to reaffirm the doctrine of worthier title, saying:

"Being a part of the English common law, the principles set forth in those decisions (Chudleigh's Case, 1 Co. Rep, 113b, 130a) accurately expressed the common law of Pennsylvania also, while it was a colony, and, not being unsuitable to the habits and customs of our people, thereafter continued as part of our common law, until, by the Act of June 29, 1923, P. L. 914, a different rule was directed to be applied in the future."

It was in this case that Justice Simpson intimated that the basis for the doctrine of worthier title found expression in the Latin phrase "nemo est haeres viventis". However true that statement may be, it is submitted that this is a gross misconception of the theory behind the doctrine of worthier title and that it is entirely inapplicable. The fact that there are charges or incumbrances upon the land devised does not affect the operation of the doctrine of worthier title in Pennsylvania. To quote Chief Justice Gibson in the *Case of Jonas Hartman's Estate*:

"2053 Pa. 141 (1866).
212 W. N. C. 156 (1875).
22302 Pa. 439 (1931). The owner of certain lands executed a declaration of trust in which he declared himself trustee thereof for his two adopted children, their children and remoter descendants and for their mother, "and in case of the death of both of them . . . without leaving any child or children then surviving as aforesaid or in case such child or issue shall die under age," then from and after the decease of the mother, to hold in trust for the settlor's right heirs. The settlor survived all the parties in interest named except one of the adopted children. Neither of the children had children or remoter descendants. At the death of the last survivor of the adopted children, the court was called upon to determine the disposition of the proceeds of the subject matter of the trust, and it was held that it went to the estate of the settlor; the provision for the right heirs being void.
234 Rawle 39 (1833); See also Kinney v. Glasgow, 53 Pa. 141 (1866)."
"Wherever the will gives, as regards quantity and quality, though clogged with a condition or incumbrance, exactly what the law would have given, in other words, that incumbering the estate by the will, shall not alter its descendable quality, the law casting it on the heir, notwithstanding the devise to him, merely subject to the charge."

The Pennsylvania courts have frequently failed to recognize this doctrine of worthier title in cases where the doctrine would have been applicable. A notable example of over-sight is illustrated by the case of King v. York Trust Company. This was a proceeding in equity to set aside a trust. The settlor, being incompetent to conduct his business affairs and desiring to preserve his estate, and his wife executed a deed of trust of the settlor's property, both real and personal, to a trustee. The trustee by the deed was given complete powers of management, sale, investment, reinvestment, etc., to be held in trust for the settlor, his wife and children. After the decease of the settlor, the deed provided that the corpus of the trust fund was to be distributed among the settlor's wife and their children, in accordance with the intestate laws of Pennsylvania, and if none of them survived him the same to descend to the collateral heirs of the testator under the intestate laws of Pennsylvania. Later, the settlor, becoming competent, his wife and their living children filed a bill in equity praying for the revocation of the trust. The Supreme Court held that the trust was irrevocable and that the beneficiaries thereunder took as purchasers and not as legatees, the instruments not being testamentary, and that the rule that a trust may be terminated by the consent of all the beneficiaries was inapplicable, for it was impossible to determine until the settlor's death who the ultimate beneficiaries would be. Certainly this case begged for a discussion and application of the worthier title doctrine for had the court applied that rule, there would have been a reversion in the settlor as the conveyance to the heirs of the settlor would have been void, thus enabling the settlor to terminate the trust and secure a reconveyance on the ground that he was the only person beneficially interested. On other occasions the court has inaccurately referred to the interest in the heirs as a "remainder", but in none of these cases was the court addressing itself to the problem involved in the doctrine of worthier title. Therefore, we can conclude that the common law doctrine of worthier title was, in all its essentials, the law of Pennsylvania at least until the passage of the Act of 1923, P. L. 914.

What modifications and limitations did the Act of 1923 work upon the doctrine of worthier title in Pennsylvania? The Act provides:

24278 Pa. 141 (1923).
26Busby's Appeal, 61 Pa. 111 (1869); Stewart's Estate, 147 Pa. 383 (1892); Bache's Estate, 246 Pa. 276 (1914); Tatham's Estate, 250 Pa. 268 (1915); Frisbie's Estate, 266 Pa. 574 (1920).
271923, P. L. 914; 21 P. S. sec. 11.
"Section 1. Be it enacted, &c., that hereafter when in and by the
provisions of any deed or will or other instrument in writing, prop-
erty, either real or personal, or both, shall be donated, granted, de-
vised or bequeathed, either directly or in trust, for the use and benefit
of any other person, charity or other use, for years or for life or upon
condition, and which shall provide therein, upon the termination of
the estate for years or for life or upon condition or other cause, the
remainder over shall vest in the donor's or grantor's heirs or next of
kin or the persons thereunto entitled under the intestate laws, or
other similar or equivalent phrase, the same shall be construed as
meaning the person or persons thereunto entitled at the time of the
termination of the estate for years or for life or upon condition under
the intestate laws of the Commonwealth as they shall exist at the
time of such termination; and such phrase shall not be construed as
meaning the person or persons who were the heirs or next of kin of
the donor at the time of the grant or donation was made or at the
time the testator died; provided, however, that nothing herein con-
tained shall be construed to prevent any donor or testator from ex-
pressly or by necessary implication directing otherwise; and Pro-
vided, Further, That the provisions of this act shall not apply to any
case now pending."

The legislature in framing this piece of legislation was guilty of employing loose
and inappropriate terminology in that the phraseology implies that the estate
created by the grant or devise to the heirs of the grantor or testator was a remainder
prior to the Act of 1923, when in fact the resulting estate was a reversion in the
grantor or testator whenever there was an attempt to create a remainder in the
heirs of the grantor or testator. However, by the rules of statutory construction,
the statute may be interpreted to apply to the situation where the doctrine of
worthier title would otherwise apply. In the interpretation of statutes, the pri-
mary rule is to ascertain the intent of the legislature and to give effect to that in-
tention. The courts are not confined to the literal meaning of technical words;
the real purpose and intent of the legislature will prevail over the literal import
of the words.28 The legislature will be presumed to have intended what is reason-
word "remainder" by the legislature must subordinate itself to the intent of the legislature which manifestly intended to change the settled presumption found in prior Pennsylvania cases and at common law that where a testator employed the use of the word "heir" in a limitation over that it meant in the absence of language indicating a contrary intent, the heirs to be determined at the date of his death, rather than his heirs at the termination of the present estate. The rule is now otherwise under the Act of 1923 and the heirs are now to be determined as of the end of the particular estate for years, or for life or upon condition. Thus, the ultimate effect of this statute is to abolish the doctrine of worthier title where there is a grant or devise of property for years or for life or in fee with a limitation over to the heirs of the grantor or testator, in the absence of a contrary intent. At common law, if the grantor or testator meant 'children' or those who would be his heirs at the death of the life tenant, or if in any other way he indicated a class of remaindermen which might differ from his heirs general, the doctrine of worthier title had no application. Thus the Act of 1923 merely changes the presumption which had been established by common law, and as a result, whenever the statute applies, the doctrine of worthier title does not apply for when the heirs are to be determined at the end of the life estate or at some time in the future the doctrine is not applicable and the heirs take by purchase.

But does the Act of 1923 completely abolish the doctrine of worthier title from the law of Pennsylvania? Justice Simpson in the case of Brolasky's Estate lays down a broad and sweeping statement to the effect that the doctrine of worthier title had been the common law of Pennsylvania until the passage of the Act of 1923, but "that a different rule was directed (by that statute) to be applied in the future." This statement would seem to be a bit strong in the light of the proviso of the statute which provides:

"That nothing herein contained shall be construed to prevent any donor or testator from expressly or impliedly directing otherwise."

Therefore, since the statute provides that the testator or donor may designate, expressly or impliedly, those heirs at the time of the grant or the heirs at the time of the death of the testator, the doctrine of worthier title would still be applicable to such a factual situation. The natural and appropriate office of a proviso is to restrain and qualify the generality of the language that it follows. In view of this proviso, the Act of 1923 has not completely abrogated the common law doctrine of worthier title for it is to this precise situation that the rule is applicable. There is a presumption that the legislature, in the enactment of statutes, does not

30Hood's Estate, 323 Pa. 253 (Advance Repts. 1936); Donohue v. McNichol, 61 Pa. 73 (1869).
3325 R. C. L. 984.
intend to overturn long established principles of the common law unless such intent is made clearly to appear either by express declaration or necessary implication.35

Another factual situation to which the Act of 1923 would seem not to be applicable is where the testator or grantor devises or grants real property to a person by name, who is in fact an heir. At common law, the doctrine of worthier title was applicable where the description of the heir was by name.36 The statute provides that where the "remainder shall vest in the donor's or grantor's heirs or next of kin or persons thereunto entitled under the intestate laws, or other similar and equivalent phrase." It is submitted that a grant or devise to an heir by name cannot be construed to fall within the statutory phrase, "or other similar or equivalent phrase," in view of the rule of statutory construction that statutes in derogation of common law are to be strictly construed.37

CONCLUSION

The doctrine of worthier title has no place in modern real property law, and it does not serve any genuine social service. There is, today, no valid objection to the creation of a contingent remainder in the heirs of the grantor or testator and consequently the doctrine of worthier title should be completely eliminated. Yet the dogma is so deeply rooted in the common law that the courts are hesitant to break away from precedent, and in absence of statutes abrogating the rule completely, the courts are prone to follow precedent. Justice Simpson, in Brolasky's Estate,38 accurately expressed the attitude of the courts thusly:

"We are aware that this conclusion antagonizes a cardinal rule in present day construction of written instruments, in that it wholly eliminates a portion of the language of the deed, to which portion due effect might readily be given; but we are also aware that through the centuries the conclusion reached in these cases has been a rule of property, to overturn which might unsettle many titles; and hence the change should be made, if at all, by prospective legislation only."

Therefore, until the legislature of Pennsylvania enacts legislation completely abrogating the doctrine of worthier title, the Pennsylvania lawyer must be on the constant lookout for situations where the doctrine is properly applicable.

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36Hurst v. The Earl of Winchelsea, 2 Ld. Keny. 444 (1759); Langley v. Sneyd, 3 Br. & Br. 243 (1822); Stilwell v. Knapper, 69 Ind. 558 (1880); 46 Harv. L. Rev. 993; 1 Simes, Law of Future Interests, 265.

37See note 35.

38302 Pa. 439 (1931).