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"REMAINDERS" TO CONVEYORS' HEIRS
OR NEXT OF KIN

J. Wesley Oler*

I. THE RULE OF REVERSION GENERALLY

A. Rule Stated.

The Rule in Shelley's Case has a brother. Some call him the Rule in Bingham's Case. Some hail him as the Rule in Bedford's Case. Some just damn him as "The Doctrine of Worthier Title." The plurality of his appellations alone puts him in disrepute—where he doubtless belongs. At the risk of adding to his ignominy we shall refer to him as the "rule of reversion." His sum and substance, which sometimes varies, is that if A makes an inter vivos conveyance to B, with purported remainder to the heirs of A, there is no remainder, but only a reversion in A, and A's heirs take, if at all, by descent, not by purchase.

Lord Coke stated the matter this way:¹

"If a man seised of lands in fee make a feoffment in fee (and depart with his whole estate), and limit the use to his daughter for life, and after her decease to the use of his son in tail, and after to the use of the right heirs of the feoffor; in this case, albeit he departed with the whole fee simple by the feoffment, and limited no use to himself, yet hath he a reversion. . . . If the limitation had been to the use of himself for life, and after to the use of another in tail, and after to the use of his own right heirs, the reversion had been in him, because the use of the fee continued over in him."

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¹Co. Litt., 22b.
Not to be outdone, Blackstone countered: 2

"These incidental rights of the reversioner, and the respective modes of descent, in which remainders very frequently differ from reversions, have occasioned the law to be careful in distinguishing the one from the other, however inaccurately the parties themselves may describe them. For if one seised of a paternal estate in fee makes a lease for life, with remainder to himself and his heirs, this is properly a mere reversion, to which rent and fealty shall be incident, and which shall only descend to the heirs general, as a remainder limited to him by a third person would have done; for it is the old estate, which was originally in him, and never yet was out of him."

A testator's death at once ends his own interests and marks a moment which is the same whether his heirs take his property by descent or under his will. During the prevailing era of canons like that of the "blood of the first purchaser," a ruling that the heirs of a testator took by descent rather than by will actually gave them a title different from what they would have taken under the testament. Today, with the general abolition by statute of distinctions in incidents of title by descent and title by purchase, not much significance attaches in will cases to the principle of worthier title, although occasionally a situation is presented where it may have some meaning. 3 As we shall see, however, continued and growing importance clings to the rule of reversion with respect to conveyances effective before the death of the grantor. Accordingly, this article is concerned only with inter vivos transfers.

B. Rationales of the Rule.

The scholar's explanation is that the rule of reversion is an aspect of the doctrine of worthier title, 4 which grew out of a desire to preserve for feudal overlords the valuable incidents of inheritance by an heir, and to protect the grantor's creditors. 5 Without assuming to question the soundness of the explanation, one may yet wonder whether the heirs take a "worthier title." In truth they are apt to get no title at all, for the reversion being in the grantor, it is his to dispose of as he wishes. And to get down to cases, the writer's attention has encountered only a couple in which the idea of worthier title was clearly in the court's mind when it applied the rule of reversion. 6 Certainly if that is the

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2 BL. COMM. 176.
3 See Re Sheeler, —— Iowa ——, 284 N. W. 799 (1939).
4 RESTATEMENT, PROPERTY, tentative § 514, comment a.
5 HARPER AND HECKEL, The Doctrine of Worthier Title, 24 ILL. L. REV. 627 (1930); 1 SIMES, FUTURE INTERESTS, 260 (1936).
6 Harris v. McLaran, 30 Miss. 533 (1855), in which the maxim, "Fortior et potensior est dispositio legis quam hominis," was recited; Wilcoxen v. Owen, 237 Ala. 169, 185 So. 897, 125 A. L. R. 539, in which the court referred to the doctrine of worthier title in will cases.
basis of the reversion principle, to speak of it as outmoded is to employ an understatement.

More frequently the courts have stated the dogma that no one is heir of the living \( (nemo \text{ est haeres viventis}) \), or that during the ancestor's life he bears all his heirs in his body.\(^7\) Insofar as this may suggest invalidity of the conveyance for want of known grantees, it tends to disregard a conveyor's power to create future interests in favor of persons not yet ascertained or in being, if they are bound to be determined within a period permitted by law.

A point possibly in favor of the rule, though not mentioned by the courts, is that it furthers immediate alienability of the fee by giving it to the grantor, a definite person, who can presently convey it. The obvious reply may be that he has already transferred it to persons who will be his heirs at his death.

By and large the courts which have applied the rule of reversion have done so on the basis of precedent, and have not undertaken to justify the rule itself. Where land titles are involved and the rule has been regarded as well settled, this attitude is not so unreasonable as at first blush it may appear to be.

As happy a basis as can be found for the rule, and one that is gaining in approval, is that prima facie it carries out the conveyor's intent.\(^8\) This is the view thus far taken by the American Law Institute in the Restatement of Property.\(^9\)

C. The Preceding Estates.

In the English cases themselves a reversion in the grantor resulted from an inter vivos conveyance of an estate tail with remainder to the conveyor's right heirs.\(^10\)

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\(^8\)This phase of the subject is treated \textit{infra}, II.

\(^9\)Tentative § 314 (1).

\(^{10}\)Fennick v. Mitford. Leon pt. 1, p. 182, 74 Eng. Rep. 168, \textit{sub nom.} Fenwick v. Mitforth. F. Moore, 284, 72 Eng. Rep. 583 (1589) (lewy, by one seised in fee, of fine to use of his \textit{wife for life}, remainder to the use of his oldest son and the heirs male of his body, remainder to the use of the right heirs of the conusor); Bedford v. Russell, Popham 3, 79 Eng. Rep. 1126, \textit{sub nom.} Bedford's Case, F. Moore, 718, 82 Eng. Rep. 861 (1593) (enfeoffment, by one seised of a manor, to another to his own use for forty years, afterwards to the use of his second son and the heirs male of his body, and in default of such issue to the right heirs of the feoffor forever); Read v. Erington, Cro. Eliz. pt. 1, p. 321, 78 Eng. Rep. 371 (1594) (conveyance of manor, by one seised in fee, to use of his son and the wife of his son and the heirs male of the son's body,
In the United States the doctrine of reversion has most generally been invoked where a limitation to the conveyors' heirs or next of kin followed the creation of one or more life estates, the limitation to the heirs or next of kin in some cases being direct and unconditional, but more commonly contingent upon a particular event, such as the failure of a gift of the remainder to others. At least two cases have applied the rule where the first estate created was in the nature of a fee afterwards to the use of the conveyors' right heirs; Bingham's Case, 2 Coke, 91a, 76 Eng. Rep. 611 (1601) (levy of fine, by one holding a manor by knight service, to the use of himself and his wife and his heirs, with a subsequent levy of another fine to the use of himself for life, thereafter to the use of his son in tail, and in default of such issue to the use of his own right heirs); Godbold v. Freestone, 3 Leav. 406, 83 Eng. Rep. 753 (1694) (feoffment of Blackacre, by one seised of land by descent a parte materna, to the use of himself for life, remainder to his wife in her life, remainder to the heirs of his body on his wife begotten, remainder to his right heirs; and of Whiteacre to the use of himself for 99 years if he so long lived, remainder to trustees for his life, remainder to his wife for her life, remainder to his first and so to his tenth sons in tail, remainder to himself and his heirs); Godolphin v. Abingdon, 2 Atk. 57, 26 Eng. Rep. 432 (1746) (limitation to A for life, to his wife for life, to trustees to preserve contingent remainders, to the first and every son in tail, remainder to A's own right heirs).

defeasible by failure of issue.\textsuperscript{13} In such a case the interest of the conveyor by virtue of the rule would seem to be a possibility of reverter rather than a reversion.

D. Application to Personal Property.

In its inception, of course, the rule of reversion applied to conveyances of real estate, but in the United States its operation has been extended quite generally to transfers of personal property. This has been done for the most part through that silent process by which courts so often enlarge the scope of a legal principle without alluding directly to the expansion.\textsuperscript{14} In an early Mississippi case, however, the court undertook to explain the applicability of the rule to conveyances of personal property by saying:\textsuperscript{15}

“Heirs, in their character as such, do not succeed to the chattels personal of the ancestor in virtue of title by descent. They vest in the administrator as assets for the payment of debts, and then for distribution amongst the next of kin. But the above-stated principle of the common law is as applicable to gifts of chattels personal as to devises of real property. The rule extends 'to gifts,' 'to next of kin,' 'distributees,' 'relations,' and to other gifts which by construction are to 'next of kin.' Keyes, Chattels, 46. And for this reason it is laid down that a remainder in personal chattels must be limited to a person capable of taking it by purchase, or it will be void. Thus, if A by deed convey a chattel personal to one for the life of A, remainder to the 'next of kin,' 'distributees,' or the relations of A, a

\textsuperscript{13}Coomes v. Frey, 141 Ky. 740, 133 S. W. 758 (1911); Brolasky's Estate, 302 Pa. 439, 153 Atl. 739 (1931).


\textsuperscript{15}Harris v. McLaran, 30 Miss. 533 (1855). See the criticism of this case in Boone v. Baird, 91 Miss. 420, 44 So. 929 (1907).
reversionary interest remains in A, and upon his death the property passes by representation and not by purchase. Keyes, Chattels, 230.

And the New York Court of Appeals has conceded the extension of the doctrine to transfers of personality. Indeed, in the current day of emphasis upon trusts of intangibles, they offer the most fertile field for application of the rule.

E. "Heirs" and Words of Similar Import.

Although instances of the application of the rule of reversion in England were largely confined to the situation where the limitation was to the conveyor's "right heirs," in this country the courts have applied it with respect to a variety of language describing, in general terms, persons who would take by operation of law at the conveyor's death. Thus, the rule has operated in cases of limitation to the conveyor's "heirs," "right heirs," "heirs at law," "legal heirs," "lawful heirs," "heirs and assigns," and "next of kin." With less reason it has been held to apply where the limitation was to "lineal descendants, per stirpes." Sometimes the limitation has been simply to those who would take under the statute of descent or distribution. In several instances the conveyor

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17See cases cited in note 10, supra.
19West Tennessee Co. v. Townes, 52 F. (2d) 764 (N. D. Miss., 1931); Miller v. Fleming, 7 Mackey (Dist. Col.) 139 (1889); Threll v. Clanton, 210 N. G. 391, 186 S. E. 483 (1936); Brolasky's Estate, 302 Pa. 493, 13 Atl. 739 (1931).
22Harris v. McLaran, 30 Miss. 533 (1855).
mentioned himself before his heirs in the limitation.27

The view tentatively taken in the Restatement of Property is that if the limitation be to the conveyor's "heirs," this will ordinarily suffice to bring the rule into operation, even though the property involved is personality.28 The cases support that position.29 In the converse situation, however, the Restatement indicates that a limitation to the conveyor's "next of kin" will not make the rule applicable with respect to real estate.30 A recent decision from Alabama,31 applying the rule to a limitation of real property to the grantor's "next of kin," is in justifiable opposition to this intimation.

Instead of limiting to his heirs or next of kin in general terms, the conveyor may designate by name persons who at his death turn out to be his heirs or next of kin. In cases of testamentary disposition the doctrine of worthier title operates justifiable opposition to this intimation.

And in a case of limitation to a settlor's "children who survive her and the lawful


Tentative § 314, comment c.


Tentative § 314, comment c.

Wilcoxen v. Owen, 237 Ala. 169, 185 So. 897, 125 A. L. R. 539 (1938).

See The Doctrine of Worthier Title and Statutory Limitations in Pennsylvania, (1937) 41 DICK. L. REV. 175, 182.

RESTATEMENT, PROPERTY, tentative, § 314, comments c and j; 1 SIMES, FUTURE INTERESTS, 264 (1936).

issue, per stirpes, of those who predecease" her leaving issue surviving her, the
rule has apparently been applied on the ground that persons so described would
possibly be her heirs or next of kin.35

F. Relation to Rule in Shelley's Case.

Mention has already been made of the fraternity between the rule of reversion
and the Rule in Shelley's Case. The fact is that where settlers have conveyed in
trust for the benefit of themselves for life, with purported remainder to their
heirs or next of kin, the brotherhood of the rules has often been so close that to
some courts they have appeared as indistinguishable twins. While sitting on the
New York Court of Appeals, the late Mr. Justice Cardozo pointed out the mis-
take of thus confounding the two rules. A settlor had conveyed real estate in
trust for his own use for life and for the payment of a number of debts, with
power in the trustee to mortgage or sell the premises, and it had been directed
in the deed of trust that at the end of the life estate the premises should be
conveyed to the settlor's heirs at law or, in event of a sale, the balance of the
proceeds should be conveyed to them. It was said:36

"To such a situation neither the rule in Shelley's Case (1579-1581)
1 Coke 104, 76 Eng. Reprint 233, nor the statute abrogating the
rule (Real Property Law, § 54), applies. The heirs mentioned in
this deed are not 'the heirs of a person to whom a life estate in the
same premises is given.' Real Property Law, § 54. The life estate
belongs to the trustee. The heirs are the heirs of the grantor. . . .
Here the question is not whether a remainder is contingent or vested.
The question is whether there is any remainder at all. In the solu-
tion of that problem, the distinction is vital between gifts to the
heirs of the holder of a particular estate, and gifts or attempted gifts
to the heirs of the grantor. . . . This rule, that a reservation to the
heirs of the grantor is equivalent to the reservation of a reversion
to the grantor himself, is not to be confused with the rule in Shel-
ley's Case. The two are quite distinct. . . . The one 'applies only
to the acts of an ancestor as between him and his own heirs.' . . .
The other is confined to the limitation of an estate of inheritance
to the heirs of a person who has taken under the same instrument a
prior estate of freehold."

35Bottimore v. First & Merchants Nat. Bank, 170 Va. 221, 196 S. E. 593 (1938).
36Doctor v. Hughes, 225 N. Y. 305, 122 N. E. 221 (1919). The separation of the two rules
was also observed in King v. Dunham, 31 Ga. 749 (1861), and by Dore, J., concurring, in Beam
Attenuating the distinction thus drawn are other decisions that statutes abrogating the Rule in Shelley's Case do not defeat the operation of the rule of reversion.37

In most of the cases in which the courts recognized the existence of the rule of reversion, it was selected in tacit preference to the Rule in Shelley's Case as the basis for the decision giving the settlor a reversion where he himself had the beneficial life interest.38 In one such case the court invoked both rules to reach the same result.39 Where the settlor is only one of several life beneficiaries, there would seem to be added reason for relying on the reversion doctrine rather than on the Rule in Shelley's Case.40

Sometimes the Rule in Shelley's Case was applied without any indication of the court's attention having been directed to the rule of reversion.41 As frequently, without mention of the rule of reversion, the Rule in Shelley's Case was rejected for one reason or another, as that the life estate was equitable and the remainder legal,42 or that the settlor manifested an intent that it should not apply,43 or that personal property was involved,44 or that the rule had been applied without any indication being given that the court's attention had been directed to the rule of reversion.45


39Loring v. Elliot, 16 Gray 569 (Mass., 1845).


41Wayne v. Lawrence, 58 Ga. 15 (1877); Brown v. Renshaw, 57 Md. 67 (1881); Eaton v. Tillinghast, 4 R. I. 276 (1856); Tillinghast v. Coggeshall, 7 R. I. 583 (1863); Angel's Petition, 13 R. I. 630 (1882).

42Shackelford v. Bullock, 34 Ala. 418 (1859); Mercer v. Hopkins, 88 Md. 292, 41 Atl. 156 (1898); Mercer v. Safe Deposit & T. Co., 91 Md. 102, 45 Atl. 865 (1900); Crosby v. Davis, 2 Clark 193 (Pa., 1843).


abolished by statute. In one instance the court expressly refused to apply either rule.

Often it is virtually impossible to know which of the two rules, if either, the court had in mind. A number of Pennsylvania cases may be cited to this point.

G. Significance of the Rule.

There is probably no great peril in wagering that the rule of reversion is for the most part unknown, even among attorneys who handle a considerable amount of conveyancing or are practiced in drawing trust instruments. In any event the inclination is to disregard its practical importance. It does, however, have much significance.

The rule of reversion may affect creditors, adversely or favorably. Thus, if the grantor has the reversion and the alleged remainder to his heirs is a nullity, then is nothing that creditors of the presumptive heirs can reach. Conversely, creditors of the conveyor can prosecute their claims against his reversionary interest.

Again, although he has once conveyed the property, the effect of the rule of reversion is to empower the conveyor, as holder of the fee in reversion, to transfer it by subsequent conveyance, to the exclusion of his presumptive heirs and next of kin, or to dispose of it by will according to his own desires.


47Harvey's Appeal, 35 Pa. 207 (1860); Ralston v. Wald, 44 Pa. 279 (1863); Dodson v. Ball, 60 Pa. 402 (1869) (with reference to which the court in Gray v. Union Trust Co., 171 Cal. 637, 154 Pac. 306 (1915), said that it was unquestionably founded on the Rule in Shelley's Case); Root's Estate, 2 Wkly. Notes Cas. (Pa.) 136 (1875); Brister v. Tasker, 133 Pa. 110, 35 Atl. 851 (1809); Hoffer v. Hoffer, 24 Pa. Dist. 903 (1915); Arrison's Estate, 8 Pa. D. & C 494 (1926). See also Taylor v. Taylor, 14 R. I. 518 (1884).


One of the most important results of the rule is that, by giving a settlor the reversion where there is an ultimate limitation of the trust corpus to his heirs or next of kin, it may place him in a position to alter or revoke the trust without the consent of the presumptive heirs or next of kin, as such.85

Application of the rule of reversion may have the effect of subjecting a settlor to income tax on revenue derived from the property, or of subjecting the property to succession tax at his death.86

In one instance in which the rule was apparently applied, it had the effect of placing the affected property, at the settlor's death, in the exclusive jurisdiction of the probate court, and of giving the settlor's personal representative, as distinguished from his next of kin, the right to call the trustee to account.86

II. RULE OF LAW OR CONSTRUCTION

In England the rule of reversion was probably a positive rule of law, and its status as such in the United States has been asserted in an isolated instance or two. By and large, however, the courts in this country have treated it as a rule of construction only, yielding to contrary intent adequately expressed in the instrument of conveyance.86 This has been true particularly with respect to


90Godolphin v. Abingdon, 2 Atl. 57, 26 Eng. Rep. 452 (1740); Hargrave’s Law Tracts, 571 (1797).

91Miller v. Fleming, 7 Mackey (Dist. Col.) 139 (1889). See also Brolasky’s Estate, 302 Pa. 439, 153 Atl. 739 (1931), in which the doctrine was said to be a rule of property.

92Such is the view taken in the Restatement of Property, tentative § 314 (1).
conveyances in trust, although the same position has also been taken as to grants not in trust. In the so-called Second Whittemore Case, the New York Court of Appeals said:

"Why should not this trust agreement be interpreted as it reads? What reason is there for giving it a legal construction just the opposite to its natural meaning? . . . This is all a matter of intention. The creator of a trust can do as he pleases with his property, and the courts look to his words to guide them in decisions. The directions come from the owner of the property, and not from the law, unless there be some specific statute to be enforced. To determine, therefore, whether the settlor of the trust in this case simply created a life interest and nothing more, reserving to himself the balance of the interest in the property, we looked to his intention, as expressed in the instrument."

Trusts by way of marriage settlement have been said to offer special ground for regarding the rule of reversion as one merely of construction. In Loring v. Eliot, the Massachusetts Supreme Judicial Court observed:

"Trusts are subject to the same rules of descent, and are deemed capable of the same limitations, as legal estates. . . . But a distinction has prevailed to some extent in regard to the construction of trust estates, especially as to those which are executory, and to those created by marriage settlement; they are to be construed with a much greater deference to the manifest intention, to be deducted from the whole instrument of conveyance, than in construing the like limitations in legal estates."

Once it is conceded that the rule of reversion is one of construction only, the mind turns to inquire into the factors which will tip the scales in favor of a reversion in the grantor, on the one hand, or of a remainder in the unascertained heirs or next of kin, on the other.


61Wilcoxen v. Owen, 237 Ala. 169, 185 So. 897, 125 A. L. R. 539 (1938); Alexander v. De Kemel, 81 Ky. 345 (1883).


6416 Gray 568 (Mass., 1860).
In some of the conveyances which were held to result in a reversion to the grantor, particular language supported the decision. Thus, as already mentioned, in a number of instances the conveyor named himself in the limitation as a possible taker.Obviously such a circumstance argues for reversion, although it has been said that as far as the rule of reversion is concerned it is immaterial whether the limitation is to the grantor and his heirs, or simply to his heirs.

Other indications of an intent to keep a reversion in the grantor may be the fact that he includes his "assigns" in the limitation, or declares that the property shall "revert," or "return," or "descend," or pass by the laws of "descent," or that the heirs shall take the property in the same manner as they would "inherit." There is danger, however, of placing too much reliance upon a single word or expression. Intent should be gathered from the whole instrument.

The desirable approach is one which endeavors to catch the spirit of the conveyance.

If a reversion in the grantor results prima facie from a limitation to his heirs or next of kin, the immediate burden of proof would seem to rest upon those asserting that his intent was otherwise. This onus has been met frequently enough, but the cases do not always make very satisfactory reading, the more so because most of them involve an attempt by a settlor to revoke or alter a trust—a matter which often brings in questions collateral to that of reversion _vel non._

66 In addition to the cases cited in note 27, _supra_, see Wilcoxen v. Owen, 237 Ala. 169, 185 So. 897, 125 A. L. R. 539 (1938).

67 _Brolasky's Estate_, 302 Pa. 439, 153 Atl. 739 (1931). To the same effect, see Miller v. Fleming, 7 Mackey (Dist. Col.) 139 (1889).

68 See cases cited in note 23, _supra_.

69 _McWilliams v. Ramsay_, 23 Ala. 813 (1853); _Due v. Woodward_, 151 Ala. 136, 44 So. 44 (1907); _Wilcoxen v. Owen_, 237 Ala. 169, 185 So. 897, 125 A. L. R. 539 (1938); _Akers v. Clark_, 184 Ill. 336, 56 S. E. 296, 75 Am. St. Rep. 152 (1900); _Whayne v. Davis_, 23 Ky. L. Rep. 2174; _66 S. W. 827_ (1902); _Dooley v. Goodwin_, 29 Ky. L. Rep. 295, 93 S. W. 47 (1905); _Coomes v. Frey_, 141 Ky. 740, 133 S. W. 758 (1911); _Clark v. Hills_, 134 Ind. 421, 34 N. E. 13 (1893); _Williams v. Green_, 128 Miss. 446, 91 So. 39 (1922); _Wells v. Kuhn_, 221 S. W. 19 (Mo., 1920); _Conrad v. Funnell_, 106 Okla. 56, 232 Pac. 950 (1924); Compare _Boone v. Baird_, 91 Miss. 420, 44 So. 929 (1907); _Ray v. Golfanopoulos_, 264 S. W. 911 (Mo., 1924).

70 _Couch v. Anderson_, 26 Ala. 676 (1855); _Hazris v. McLaran_, 30 Miss. 533 (1855).

71 _McWilliams v. Ramsay_, 23 Ala. 813 (1853); _Wells v. Kuhn_, 221 S. W. 19 (Mo., 1920).


76 See, for instance, the following cases in which the court refused to permit the revocation of a trust in a situation in which the rule of reversion might have been applicable, but did not discuss the rule: _Lawrence v. Lawrence_, 181 Ill. 248, 54 N. E. 918 (1899); _Anderson v. Kemper_, 116 Ky. 359, 76 S. W. 122 (1905); _Mills v. Mills_, 261 Ky. 190, 78 S. W. (2d) 389 (1935); _Sands v. Old Colony Trust Co._, 195 Mass. 575, 81 N. E. 300, 12 Ann. Cas. 837 (1907); _Christ v. Kuehne_, 172 Mo. 118, 72 S. W. 537 (1903); _King v. York Trust Co._, 278 Pa. 141, 122 Atl. 227 (1923).
The same factor which influences one court to hold that a valid remainder is created may be disregarded or employed to reach a different conclusion in another case. Thus, the fact that a settlor of a trust reserves the power to dispose of the corpus by will may be used to sustain the arguments, respectively, that by so providing he showed an intent not to retain the general power of disposition which a reversioner would have, or, contrariwise, by so providing he manifested an intention, consistent with his powers as a reversioner, to continue his control of the fee. Again, a settlor’s reservation of right to only a part of the corpus has been said to indicate an absence of reversion as to the rest; but rather similar reservations in other cases have not led to the same conclusion.

It has been suggested that in event of a limitation to the heirs of a settlor “now living,” or “to such persons as would be the heirs” of the settlor “were she now dead,” the rule of reversion would be construed to include those persons ...
only who would be entitled to distribution under the state laws "at the time of such distribution;" and with another case, not mentioning the rule, in which the limitation was to "such persons as would by the now existing laws be the next of kin" of the settlor. There are other cases, however, in which the rule of reversion has operated notwithstanding that the limitation was to heirs who were to be determined as though the settlors' death coincided with that of their son, or the limitation was in terms "after the termination of said life estate," or "then from and after" the decease of a beneficiary.

The fact that trustees are directed to "convey" or "transfer" the corpus to the settlor's heirs at the termination of the particular estate does not prevent the application of the rule of reversion. And in a case in which the rule was considered to be one of law, it was applied despite the settlor's direction that his heirs were to take as "tenants in common, and not as joint tenants."

III. EFFECT OF STATUTES

England saw the passing of the rule of reversion through the enactment of the Inheritance Act of 1833, providing that when land shall have been limited by any assurance to the person or to the heirs of the person who shall thereby have conveyed the same land, such person shall be considered to have acquired the same as purchaser by virtue of such assurance, and shall not be considered to be entitled thereto as his former estate or part thereof.

In the United States statutes have done little to impair the efficacy of the rule. Thus, it is not changed by a statute which, as regards the rule against perpetuities, allows a contingent remainder to the donor's right heirs, or by a statute which permits the creation by deed, in like manner as by will, of an estate of freehold or inheritance to commence in futuro. Likewise, even in cases where a settlor retained a life interest, the reversion principle has been held to be unaffected by statutes abrogating the Rule in Shelley's Case through a provision to the effect that, where a remainder is limited to the heirs of a person in whom a life estate in the same premises is given, the persons who are heirs at the termination of the life estate shall take as purchasers by virtue of the remainder

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87Miller v. Fleming, 7 Mackey (Dist. Col.) 139 (1889). At common law heirs who take by descent hold as coparceners.
88 & 4 Wm. IV, chap. 106, § 3.
89West Tennessee Co. v. Townes, 52 F. (2d) 764 (N. D. Miss., 1931).
so limited to them;\textsuperscript{91} or to the effect that, if an estate is given to a person for life, and after his death to his heirs, the same shall be construed to be an estate for life only in such person, and a remainder in fee simple in his heirs.\textsuperscript{92} Differences between the language of such provisions and that employed in the Pennsylvania Act which is aimed at the Rule in Shelley's Case\textsuperscript{93} are not so marked as to lead one to conclude that another view would be taken in this jurisdiction.

The effect of a statutory provision that any limitation to the heirs of a living person shall be construed to be to the children of such person, unless a contrary intention appears by the writing, is probably to place the burden of proof upon him who asserts that a reversion results from a limitation to the grantor's heirs.\textsuperscript{94}

In \textit{Brolasky's Estate}\textsuperscript{95} appears dictum that the rule of reversion continued in Pennsylvania "until" the enactment of the Act of June 29, 1923, P. L. 914, § 1,\textsuperscript{96} which provides in part that when real or personal property is granted directly or in trust by a written instrument, for the use of a person for years or for life or upon condition, with provision that upon the termination of such estate the remainder shall vest in the donor's heirs or next of kin, the same shall be construed as meaning the person or persons thereunto entitled at the time of determination of the particular estate under the intestate laws existing at the time of such termination; and such phrases shall not be construed to mean the person or persons who are the heirs or next of kin of the donor at the time of the conveyance; provided, however, that nothing in the statute shall be construed to prevent a donor from expressly or by necessary implication directing otherwise.

Despite the dictum, it is clear that as far as the rule of reversion is concerned this statute does little more than change the burden of proof. The possibility of reversion is not eliminated completely. And one should not forget decisions elsewhere to the effect that the rule of reversion may apply even where the conveyor provides in terms for ascertainment of his heirs as of the death of another person.\textsuperscript{97}


\textsuperscript{92}Alexander v. De Kerriel, 81 Ky. 345 (1881); Hayes v. Kuykendall, 112 S. W. 673 (Ky., 1908); Fidelity & C. Trust Co. v. Williams, 268 Ky. 671, 105 S. W. (2d) 814 (1937).

\textsuperscript{93}Act of July 15, 1933, P. L. 1013, § 1; 20 PURD. STATS. (Pa.) § 229.

\textsuperscript{94}Thompson v. Batts, 168 N. C. 333, 84 S. E. 347 (1915). In Therrell v. Clanton, 210 N. C. 391, 186 S. E. 483 (1936), the rule of reversion was applied without mention of the statute. Compare the still stronger language in the Georgia Code (1933) § 85-504.

\textsuperscript{95}Brolasky's Estate, 302 Pa. 459, 153 Atl. 739 (1931).

\textsuperscript{96}21 PURD. STATS. (Pa.) § 11.

\textsuperscript{97}Dunnett v. First Nat. Bank & T. Co., 184 Okla. 82, 85 P. (2d) 281 (1938). See also cases cited in note 84, supra.
Section 15 of the proposed Uniform Property Act provides:

"When any property is limited, in an otherwise effective conveyance inter vivos, in form or in effect, to the heirs or next of kin of the conveyor, which conveyance creates one or more prior interests in favor of a person or persons in existence, such conveyance operates in favor of such heirs or next of kin by purchase and not by descent."

To the extent that this provision may undertake not only to destroy the rule of reversion, whether as a rule of law or as a rule of construction, but also to preclude the courts from giving effect to a conveyor's expressed intention to retain a reversion, it is every bit as unfortunate as the rule itself was when most strictly applied.

ROCHESTER, N. Y.  

J. WESLEY OLER