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The Doctrine of Worthier Title in Arkansas

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 COMMENTS

The Doctrine of Worthier Title
in Arkansas

There is no body of law more arcane—or more fascinating to a peculiar mind—than the law of future interests. It is a commonplace that its origins are inextricably rooted in the political history of medieval England.1 For that reason future interests law is perhaps often regarded as an unfathomable collection of anachronous absurdities, having little or no relevance to contemporary law practice. But its precepts and principles have much modern significance; it has survived as more than a source of cerebral exercise for academic necrophiliacs. Consider for example the impact which the Rule in Shelley’s Case may have upon the personal fortunes of litigants;2 the importance of future interests law in determining the incidence and extent of death taxes;3 and the effect of the Rule against Perpetuities upon future generations.4 Other examples come readily to mind, but suffice it to say that an appreciation of the law of future interests is often necessary in understanding the broad legal implications of many fact situations.

This comment deals with one of the rules of future interests law—the doctrine of worthier title. The rule exists in two related but considerably divergent forms: the wills branch and the inter vivos branch. It seems likely that these two branches originated from the same feudal policies,5 thus they bear the same name.6

1 Edward B. Meriwether, Emeritus Professor of Law, University of Arkansas, was reportedly fond of saying that “the law of property is historical in its origins, not logical.” Leflar, Legal Education in Arkansas, 16 ARK. L. REV. 191, 202 (1962). Compare Mr. Justice Holmes’s classic comment in New York Trust v. Gisner, 256 U.S. 345, 349 (1921): “Upon this subject, a page of history is worth a volume of logic.”


4 In discussing the Rule against Perpetuities, professor Leach prophesies: “[T]he counsellor who leaves behind him a will book which succeeds in placing property where his clients wished it without those uncertainties as to validity and ambiguities as to meaning which breed litigation, can sleep the eternal sleep in the comforting knowledge that he has upheld the finest traditions of his craft.” Leach, Perpetuities in A Nutshell, 51 HARV. L. REV. 638, 671 (1938).


6 One commentator has suggested that the name “doctrine of worthier title” is a misnomer when applied to the inter vivos branch of the rule.
As will be demonstrated, however, their scope and operation are quite different; it is therefore convenient to dichotomize the discussion.

I. THE WILLS BRANCH OF THE DOCTRINE OF WORTHIER TITLE

An extended discussion of the various aspects of the wills branch is beyond the scope of this comment. However, it is felt that an elementary examination of the rule, and an analysis of the few Arkansas cases which are relevant, will serve a useful purpose.

The clearest articulation of the rule which has been discovered is as follows:

“A devise of a present or future interest in land to the heir of the testator, either by name or in form, is void if the heir takes by virtue of the devise precisely the same interest he would have taken if the devise had been stricken out of the will.”

Thus, by application of the rule, an heir-devisee may take his title by descent rather than under the will.

A. Origins of the Wills Branch

The exact origin of this rule is obscured by centuries of case law and commentary. Like most rules of property, it apparently did not emerge full-born in any one case; its development occurred incrementally. But why should a person who is plainly designated as a devisee take by descent rather than by the will? For an answer, we must look to the historical background from which the rule sprang.

Several explanations have been advanced. By far the most plausible regards the doctrine as a product of the economic system of feudal tenure, and its attendant duties and obligations. For instance, if a tenant died leaving minor heirs, the lord, as one of the

See Warren, A Remainder to the Grantor’s Heirs, 22 Tex. L. Rev. 22 (1943). This denomination, however, persists in the literature, and will be used here.

The most exhaustive analysis of the wills branch may be found in Morris, The Wills Branch of the Worthier Title Doctrine, 54 Mich. L. Rev. 451 (1956).

Consider the following statement: “That in modern litigation . . . both the bench and bar frequently overlook the rule preferring descent to purchase [the wills branch] cannot be doubted.” Note, 46 Harv. L. Rev. 993, 1000 (1933).

Morris, supra note 8, at 134.

“When the same estate is devised to a man which he would have taken by descent, he shall be in by descent . . .” Clarke v. Smith, 1 Comyrs 63, 92 Eng. Rep. 965 (K.B. 1700).

The development of the rule is carefully delineated in Harper and Heckel, The Doctrine of Worthier Title, 24 Ill. L. Rev. 627, 628 et seq. (1930).

The Rule in Shelley’s Case is a good example. The fact is that the only thing known with certainty about its origin is that it did not originate in Shelley’s case. See SIMES & SMITH, supra note 5, at § 1542.

For a review and evaluation of these explanations, see Harper & Heckel, supra note 11, at 627.
perquisites of his position, was entitled to the rights of wardship and marriage. These benefits did not enure to the lord if the heir took by purchase instead of descent. Thus, even though the statute of wills permitted testamentary transmission of property generally, the dubious fiction that it was worthier to take by descent than by will was invented to assure to the lord his feudal tax should the ancestor devise his property to his own right heirs.

B. Present-day Legal Significance of the Wills Branch

Before proceeding to determine whether the wills branch is part of Arkansas law, it seems pertinent to inquire whether today the rule is of any legal significance. For if it has no significance, its existence would be of only passing interest. Since the rule applies only when the interest devised is exactly the same as that which the devisee would take through intestacy, the rule could hardly operate to diminish or enlarge that person's share. Consequently, at first blush, the wills branch seems quite inconsequential, merely an interesting legal oddity. In fact, the Restatement maintains that "the rule . . . has completely lost significance in the solution of modern problems." This particular Restatement may well be an overstatement; there are several situations in which the outcome of litigation has turned on the acceptance or rejection of the rule. Accordingly, a brief review of these situations follows.

1. The Course of Descent

The common-law system of descents had, as its primary object, the restriction of inheritance to blood lines. The fifth of Black-

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14 See 2 Blackstone, Commentaries * 242. These feudalistic rights were abolished by statute in 1660. 12 Car. II, c. 24 (1660).
15 "The prosperity of the great lords, and thus indirectly the prosperity of the King, depended upon a continuous flow of these monetary prerequisites (reliefs, wardships and marriages) which accrued upon a descent and which were a forerunner of our modern inheritance taxes; hence the common-law prohibition of devises, the doctrine of worthier title, and the Rule in Shelley's Case, all designed to foster the passages of real estate by descent." Leach, Cases and Text on Wills 1 (2d ed. Rev. 1960).
16 32 Hen. VIII C. 1 (1540).
17 See 1 Ves. Jun. Supp. 2, 34 Eng. Rep. 666, Supplemeting Ellis v. Smith, 1 Ves. Jun. 11, 30 Eng. Rep. 205 (Ch. 1754), where this statement of the rule is offered: "When a devise of lands to the heir at law makes no alteration in the nature or limitation of the estate, the heir will take, not by purchase under the will, but by his preferable title by descent." (emphasis added).
18 Restatement of Property § 314 (2) comment j at 1787 (1940).
19 See Morris, supra note 7, at 483 et seq. The Restatement also takes the position that there is no such rule. Restatement of Property § 314 (2) (1940).
20 The rule has been accepted or referred to in a large number of states. See Harper & Heckel, supra note 11, at 642. See also Morris, supra note 7, at 486, where these jurisdictions and the cases therein are enumerated.
21 The courts of at least two states have refused to accept the rule as law. Mitchell v. Dauphin Trust Co., 263 Ky. 532, 142 S.W.2d 181 (1940); Lucas v. Parsons, 24 Ga. 640 (1857).
22 See generally Comment, 42 Yale L.J. 101 (1932).
stone's famous canons of descent provided that in order for col-
laterals to inherit, they must be of the blood of the "first purchaser" in the family line. In practice, this rule meant that if an intestate's property came to him by descent, the stock of descent was the first person discovered, in tracing the family line, who had taken the land by purchase. The rule is thus perhaps more accurately termed the "last purchaser" rule.

Thus if a landowner died intestate without lineal descendants, and he had acquired his land by descent, collaterals had to show blood relationship not only to the intestate, but to the last purchasing ancestor. It was therefore "vitally important in tracing the course of descent of land to ascertain whether it was acquired by descent or purchase."

The difficulty is best illustrated by an example. Suppose A acquires land from a stranger to his blood and dies intestate leaving his son B as his only heir. B dies intestate survived by his son C as heir. C dies intestate with no lineal descendants. Who may take? At common law, it is clear that only those collateral heirs of C who were of the blood of A could be called to the inheritance.

The ancestral property doctrine which today exists, in various forms, in many states is often compared to the common-law scheme of descents. It is clear, for instance, that they have in common the object of keeping land in the family. In the United States, relaxation of the rigid family connection requirement was almost universally deemed desirable. Today only three states (Arkansas, Delaware, and Tennessee) adhere to the ancestral property doctrine to the extent that collaterals of the whole blood (but not of the blood of the "transmitting ancestor") are excluded from inheritance. The ancestral estate statutes usually define ancestral property as land which had been acquired by descent, devise, or gift from an ancestor.

A question has developed, in construing ancestral estate statutes, as to whether the old common-law "first purchaser" rule has survived. Because the ancestral estate statutes include within their purview some land which has been acquired by purchase (i.e. gift or devise) as well as that which has been acquired by descent, there is some justification for regarding the doctrine of "first purchaser" as repudiated. In fact, virtually all of the authority supports

23 [2 BLACKSTONE, COMMENTARIES *220.]
24 TIFFANY, REAL PROPERTY § 1115 (3d ed. 1939).
25 The rule had no application to personalty.
26 See Note, 12 COLUM. L. REV. 625 (1912).
27 Morris, supra note 7, at 470.
28 There could be collateral heirs of C who were not of A's blood; e.g., siblings of C's mother, B's wife. See Meek, Descent and Distribution, ARKANSAS DESK MANUAL § 20, n.7 (1961).
29 For such a comparison, see 6 POWELL, REAL PROPERTY, § 1001 (1965).
32 In 46 HARV. L. REV. 993 at page 997 the commentator, in reviewing

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the principle that it is only necessary to be of the blood of the intestate's immediate ancestor in order to inherit. These decisions are based on an interpretation of statutes adhering to the gift-devise-descend trichotomy. Although these cases seem sound, the "first purchaser" doctrine might still have some vitality. In Arkansas, statutory provision has been made for land to "descend according to the course of the common law" in cases of intestate devolution not otherwise provided for in the general statutes of descent. If therefore the Arkansas statutes are incompatible with the first purchaser rule, it is because of a conflict in policy and not a case of mutually exclusive propositions.

The significance of the wills branch, states that so far as problems of descent are concerned, "the problem has ceased to exist, since even in the few states which retain the doctrine of ancestral estates, statutes uniformly include realty coming to the intestate by devise or gift as well as by descent." The statement is perhaps in error in three particulars. The principal error is in assuming that the doctrine of first purchaser is necessarily abrogated by the change in the statutory scheme. Moreover, at the time the note was written, the state of North Carolina had a statute which did not come within the category above presumed. N.C. Code § 1754(4) (1939). The statute has, however, been repealed and no distinction is now made between ancestral and newly-acquired property. N.C. Gen. Stat. § 29-3 (Repl. 1966). In some states, the property of a minor descends in a prescribed manner if it was acquired by "inheritance." Presumably, if it was acquired by will, then the course of descent would be different. See Gordon v. Gregg, 164 Ore. 306, 97 P.2d, aff'd on rehearing, 101 P.2d 414 (1940). Arkansas has no such statute.

The first case so decided was apparently Gardner v. Collins, 27 U.S. (2 Pet.) 58 (1829).

Ark. Stat. Ann. § 61-113 (1947). In West v. Williams, 15 Ark. 682, 692 (1855) the following statement appears:

[It] is the manifest intention of the legislature, upon the death of the intestate, without issue, to preserve them [estates coming by devise or gift from a relative] in the line of the blood from whence they came, to the same extent that descended estates were so preserved at common law [emphasis added]. To carry out that intention . . . analogous means must be used. [Hence it was an inevitable principle that] to be of the blood of the last purchasing ancestor, in the line of the transmitting relative, is as indispensable to enable a collateral to inherit, as heir of the intestate, an ancestral estate which was given or devised to the intestate, as to be of the blood of the last purchasing ancestor was, according to the principles of the common law, to enable him to inherit, as heir of the intestate, an ancestral estate which had come to the intestate by descent.

Thus the court rejected the contention that the change from the common-law system of descent abrogated the first purchaser principle.

The Arkansas Supreme Court has not been favorably impressed with the vestiges of common law adhered to in the statutes of descent. It has commented on "the impolicy of establishing lines of blood at all, in a new country, where almost every man is the architect of his own fortune and the stock of descent." Kelly's Heirs v. McGuire, 15 Ark. 555, 589 (1855). The court has been generally critical of these statutes. It remarked that portions of them were borrowed from New York, but they also contain "additions not calculated to improve, and . . . attempts at brevity and perspectuity neither happy nor successful." Id. at 583. One case referred to the statutes as "our confused and incongruous law of descents and distributions." Oliver v. Vance, 34 Ark. 564, 567 (1879). An Arkansas attorney has noted that the statutes have "obfuscated Arkansas lawyers for more than one hundred years." Meek, Descent and Distribution, Arkansas Desk Manual 17 (1961).
The doctrine of worthier title plays its part in this confusion as follows. Using the example above, suppose B had devised his interest to C instead of dying intestate. The doctrine of worthier title aside, C would be a purchaser and would become a stock of descent. But since C would have taken the land by descent as B's heir without the devise, the wills branch declares the devise void. Thus the devise did not break the chain of descent, and collaterals must still show themselves to be of A's blood to inherit.

As stated previously, most states have rejected the idea of "first purchaser" entirely, and it has thus been unnecessary in those states to inquire whether such a devise breaks the course of descent. Until quite recently, however the status of the first purchaser rule in Arkansas was uncertain. Not only were the Arkansas cases conflicting, but individual cases contradicted their expressed decisional rationale. Cupp v. Frazier's Heirs dispelled the uncertainty by unequivocally accepting the first purchaser rule as part of Arkansas law. The legal implications of the doctrine of worthier title thus become immediately apparent. The doctrine may operate to transform a purchaser into an heir, and impose upon collaterals, in the event of future intestate devolution, additional blood requirements.

36 "'Ancestor' means the immediate and not the remote ancestor." Simes, Ancestral and Non-Ancestral Realty under the Ohio Statutes of Descent, 2 U. CINN. L. REV. 387, 396 (1928), citing Curreu v. Taylor, 19 Ohio 36 (1850). "The ancestor from whom descent must be traced is, with the exception of North Carolina, the one from whom the property immediately came to the intestate, rather than the original purchaser." Comment, 42 YALE L.J. 101, 103 (1932). The North Carolina case referred to is Poisson v. Pettaway, 159 N.C. 650, 75 S.E. 930 (1912). As noted before, the case is no longer authority in that jurisdiction since the ancestral estate doctrine has been abandoned. See N.C. GEN. STAT. § 29-1 (Repl. 1966). See generally ATKINSON, WILLS 61 (1937).

37 Thus one writer noted: "This rule of 'first purchaser' has affected the Arkansas law to an uncertain extent." Meek, Descent and Distribution, ARKANSAS DESK MANUAL 11 (1961). Mr. Meek also commented that it would be "difficult for an attorney, in the present state of the decisions, to give an affirmative opinion" as to the state of Arkansas law on the subject. Id. at 27. The dictum from West v. Williams quoted in note 34 supra is of course an acceptance of the doctrine. But see Carter v. Carter, 129 Ark. 7, 195 S.W. 10, aff'd on rehearing, 129 Ark. 573, 195 S.W. 1184 (1917). One writer accepts this case as a rejection of the first purchaser rule. See ROLLISON, WILLS 47 (1939).

38 See Carter v. Carter, 129 Ark. 7, 195 S.W. 10 (1917). This case overruled Johnson v. Phillips, 85 Ark. 86, 107 S.W. 170 (1908), a case which applied the first purchaser rule. However, in deciding Carter, the court alluded with apparent approval to the dictum in West which accepted the doctrine; the decision was therefore of limited value.

39 239 Ark. 77, 387 S.W.2d 328 (1965). The court said the opinion would not be applied retroactively, but only "with respect to estates that may vest in the future." Id. at 82, 387 S.W.2d at 331. One question which this statement raises is the status of the rule as it may be applied to the successive devolution of contingent interests. Contingent interests are of course often descendible, but the court here talks only in terms of vested estates. As to the transmissibility of contingent interests, see Note, 20 ARK. L. REV. 190 (1966).

40 Admittedly, the result suggested is somewhat anomalous. It seems that the legislature intended to place land acquired by descent, devise, or gift from a relative on a completely even footing, and that therefore a
2. Other Possible Legal Consequences in Arkansas

The Iowa lapse statute,\(^{41}\) in combination with the wills branch, has produced some interesting\(^{42}\) case law. The argument involved is simple but ingenious. Suppose A devises property to B and B turns out to be A's heir. Suppose further that B predeceases A. The Iowa statute provides that "if a devisee dies before the testator, his heirs shall inherit" the property devised.\(^{43}\) Since this devise is void ab initio, by application of the wills branch, B was never a devisee; the "devisee's" heirs cannot therefore inherit.\(^{44}\) They may stand in no better position under the will than can the "devisee."

The scope of the Arkansas lapse statute\(^{45}\) differs somewhat from Iowa’s, but the wills branch could have a similar effect in this type of case. The Arkansas lapse statute provides, in part, that if a devisee should die before the testator, and if he is a "child . . . or other descendant" of the testator, then the devise does not lapse but "shall vest in the surviving child or other descendant of the devisee."\(^{46}\) The thrust of this section is identical to Iowa’s, with its scope limited to those instances where the devisee is a child or other descendant of the testator. Therefore, the argument made in Iowa might prevail in Arkansas.

But the logic of that argument has persuaded no one but the Iowa Supreme Court. Commentators have uniformly denounced these cases.\(^{47}\) As the Restatement points out, the argument involves "a fallacy . . . easily illustrated."\(^{48}\) Its most obvious weakness is in its strained and literal interpretation of the lapse statute. The purpose of the statute is to abrogate the common-law rule that a devise lapses if the devisee predeceases the testator. Manifestly, to allow the worthier title doctrine to carve out and except from the statute’s operation those situations in which the devisee is also an heir amounts to a decimation of legislative intent. The typical lapse statute is "pre-eminently concerned with the type of case which involves a devise to the testator's heirs;"\(^{49}\) Arkansas’s statute is solely concerned with that type of case.

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\(^{41}\) Iowa Code § 6663.16 (1954).
\(^{42}\) Other adjectives have been employed to describe the Iowa cases. "Curious." Morris, supra note 7, at 431; "Peculiar." Harper & Heckel, supra note 11, at 651. "Curious." Mechem, Cases and Materials on Future Interests 52 (1958).
\(^{43}\) Iowa Code § 6663.16 (1959).
\(^{44}\) See In re Warren's Estate, 211 Iowa 940, 234 N.W. 835 (1931), noted in 16 Iowa L. Rev. 559 (1931); Beem v. Beem, 241 Iowa 107, 41 N.W. 247 (1950).
\(^{46}\) Id.
\(^{47}\) See, e.g., Note, 39 Iowa L. Rev. 199 (1953).
\(^{48}\) Restatement of Property § 314, comment j at 1788 (1940).
\(^{49}\) Id.
The other portion of the Arkansas lapse statute also is of interest. It provides that if “a devise of property . . . is void . . . the property shall become a part of the residue.” If taken literally, in conjunction with the doctrine of worthier title, this section could cause fantastic distortions of testamentary intent. The wills branch declares certain devises void. This statute applies, presumably, in all cases where the devise is void. Therefore, residuary heirs would take the property devised to heirs.

This argument is of course completely specious. The doctrine of worthier title declares devises “void” only in the sense that the will is not the vehicle of transmission; the law is presumed to transmit the property by intestate devolution. The doctrine is therefore predicated upon the fact that the person will be in by descent. Since this statute voids that predicate, the doctrine should not be applied. But the argument advanced here is only slightly more preposterous than the one made in Iowa. There is therefore a possibility that a party urging this result might prevail in a hyper-technical court. Hopefully, the Arkansas courts would not be so persuaded.

There is one more situation in which the wills branch might have significance in Arkansas. The Arkansas abatement statutes provide that if property of a decedent must be sold to satisfy claims or legacies, the intestate assets are to be sold before property devised. Normally, this testate-intestate bifurcation occurs only when there is no residuary clause in the will. However, if the doctrine causes an heir-devisee to take by descent, it is possible that his property would be sold to satisfy debts before the property of other devisees. At least two cases have so held; no American case has been discovered which rejects the argument.

There are many other situations in which the doctrine of worthier title has been influential in the outcome of litigation. Commentators have hypothetically posed still others. For our purposes, it seems clearly demonstrated that the doctrine, if it exists in Arkansas, would be of legal significance. It is therefore pertinent now to inquire as to the status of the doctrine in Arkansas.

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52 Ark. Stat. Ann. § 60-411 (Supp. 1965) provides that in the event of partial intestacy, “the part not disposed of by will shall be distributed as provided by law with respect to the estates of intestates.”
55 See generally Morris, supra note 7. See also Note, 16 Tenn. L. Rev. 358 (1940).
56 See, e.g., Note, 14 N. C. L. Rev. 90, 95 (1935).
C. The Arkansas Cases

There seems to be only one Arkansas case which discusses the wills branch at any length. In *West v. Williams*, the court reviewed a chancery action for the recovery of a tract of land. A, having received the property by devise from his maternal grandmother, died intestate leaving no issue. B, A's father, claimed the land ascended to him; the grandmother's relatives maintained that they were the rightful heirs. Counsel for B argued that A did not take, under his grandmother's will, as devisee, but inherited the land as her sole heir at law. For, where land is devised to the heir at law in the same estate, which he would take as heir, the devise is inoperative, and the heir takes by descent as the better title.

Just exactly what benefit would devolve upon B from the operation of the wills branch is not readily perceived. If anything, the other party to the suit should have been urging the rule. Actually, of course, it could make absolutely no difference in the outcome of the case. As the court said:

In response to the position of counsel of [B], that inasmuch as the devise was to the same person, who would have taken the estate as heir at law, the devise shall be held inoperative, and the devisee as in by descent, it is to be remembered that, although it might be so held, the result would be precisely the same. . . .

The court is referring to the fact that the grandmother was the last family purchaser; the method by which A took the property would be therefore immaterial.

But then the court remarks by way of dictum:

In that case [if A is in by descent], however, the result would have been very different, as to future descents from those who, in either case [whether A is in by descent or purchase], would inherit from [A] and die without issue; because, only such of the heirs of such intestate inheriting from [A] and dying without issue, could be called to the inheritance, as were the blood of [A's] grandmother . . .; whereas, under the actual state of the case, [A] having taken an ancestral estate by devise from his grandmother, is in by purchase, and thereby becomes himself a stock of descent. . . .

The result suggested by this dictum is anomalous. Assuming that the first purchaser idea is not directly incompatible with our statutes of descent, it is still inconceivable that the legislature intended the result suggested here. Arguably, the statute intends that land received by descent, gift or devise from a relative be treated in exactly the same manner. How then could a devise from a relative in any manner change the course of descent which would have been followed if A were in by descent? The legislative intent was to treat both situations without disparity.

The two alternatives to the court's dictum are simple. The court could abandon the first purchaser approach and declare that

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57 15 Ark. 682 (1855).
58 West v. Williams, 15 Ark. 682, 687 (1855).
59 Id. at 693.
60 Id.
only blood relationship to the immediate ancestor is necessary.\textsuperscript{61} The other alternative is to hold that chains of inheritance, gift and devise must be followed (without allowing taking by purchase to break the course) until the first family holder is found. That person would then be the stock of descent. The second alternative is an extension of the first purchaser rule as it existed at common law, and seems contrary to the general tendency of the statute to abrogate the rigid common-law blood requirements.\textsuperscript{62} The first alternative seems the more acceptable one; it is not, however, the one here chosen. Unfortunately, the case accepts neither of them; an acceptance of either would have rendered the will branch insignificant in problems of descent.

Irrespective of whether the court’s reasoning is faulty, the words used are indicative of how it viewed A’s taking: “[U]nder the actual state of the case, [A] having taken . . . by devise . . . is in by purchase . . . “\textsuperscript{63} This language indicates that the court has rejected the doctrine entirely and has not merely, as in its first pronouncement, found it without legal significance. It would perhaps be placing too much weight on too frail a reed to regard the West case as having irrevocably expunged the doctrine from the law of Arkansas. But it is certain that the case does not accept the wills branch as part of our law.\textsuperscript{64}

Only one other Arkansas case has been found which contains a reference to the wills branch, and then only in the reporter’s synopsis of counsel’s argument. In Shirey v. Clark\textsuperscript{65} the argument was made that “an estate as by purchase passed, and not one by descent.”\textsuperscript{66} But the case involves a deed, not a will, and belongs more properly to the inter vivos branch of the doctrine. Accordingly, it will be discussed infra.\textsuperscript{67}

\section*{D. Summary}

The wills branch of the doctrine of worthier title has stubbornly survived its feudal origins, and, within the admittedly lim-

\textsuperscript{61} Interestingly, the Supreme Court of Oklahoma, construing the Arkansas statutes of descent, arrived at this conclusion. In Lincoln v. Herndon, 285 P. 120 (Okla. 1930) that court overruled In re Lewis’ estate, 100 Okla. 283, 229 P. 483 (1924), a first purchaser case: “Manifestly, there was no authority for tracing the ancestral [property] further than the source of the immediate ancestor.” Lincoln v. Herndon, supra at 125. The act creating the Oklahoma Territory received into the laws of the Indian Territory certain laws of the state of Arkansas. 1890 Stat. ch. 182, p. 81-100 (§ 31 at 98). Thus, Oklahoma courts have been called upon to construe Arkansas statutes.

\textsuperscript{62} See, e.g., ARK. STAT. ANN. § 61-112 (1947), partially abrogating the common-law rule which excluded half-bloods from inheritance.

\textsuperscript{63} West v. Williams, 15 Ark. 682, 693 (1855).

\textsuperscript{64} Two text writers have cited this case as having approved the wills branch. See PAGE, WILLS § 214 (3d ed. 1941); THOMPSON, WILLS § 74 (2d ed. 1936).

\textsuperscript{65} 72 Ark. 539, 81 S.W. 1057 (1904).

\textsuperscript{66} Id. at 542.

\textsuperscript{67} See text accompanying note 115 infra. For an example of a will directing the estate to be distributed “to my heirs,” see Crittenden v. Lytle, 221 Ark. 302, 233 S.W.2d 361 (1952).
imited reach of its perimeters, unfortunately persists in some few jurisdictions. In problems of descent, lapse, and abatement the doctrine has sometimes been significant. In Arkansas, there is some tenuous justification for regarding the rule as repudiated. But the issue has never been squarely decided, and the question of its existence remains open.

II. THE INTER VIVOS BRANCH OF THE DOCTRINE OF WORTHIER TITLE

Professor Warren, in criticizing the application of the name "doctrine of worthier title" to the inter vivos branch, once asked: "Why tie a bull pup to the tail of a dead cat?"\(^8\) While the wills branch is perhaps more significant than a dead cat, it is entirely correct to view the inter vivos branch as the "bull pup" of the two rules. It has been involved in more litigation than its counterpart, and has produced, at times, even more unfortunate results.

The inter vivos branch of the rule may be stated as follows:

*When a conveyance is made which contains a limitation over to the heirs of next of kin of the grantor, the limitation is ineffective, and the grantor retains a revisionary interest.*

Unlike the wills branch, this rule does not apply unless generic terms like "heirs" or "next of kin" are used. Even if a specifically-named remainderman turns out to be heir in fact, the rule will not operate.\(^6\)

**A. Origins of the Inter Vivos Branch**

Like its counterpart, the inter vivos branch finds its historical justification in the tenurial relationship between lord and tenant.\(^7\) It seems curious, however, that the rule is limited in its application to those instances where words like "heirs" or "next of kin" are employed. If the true purpose of the rule was to defeat conveyances to those who would take by intestate succession, its limited applicability renders it singularly unsuited for accomplishing that object.\(^7\) The feudal rights of the lord could easily be frustrated by limiting the estate *eo nomine* to the person who would inherit.\(^7\) It would seem, therefore, that the rule might have originated as a rule of construction rather than a rule of property. No English case, however, takes this view, and a "limitation to [the grantor's] right heirs is "meerly void."\(^7\)

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\(^6\) Warren, A Remainder to the Grantor's Heirs, 22 Texas L. Rev. 22, 28 (1943).
\(^7\) Simes and Smith, Future Interests § 1608 (2d ed. 1956).
\(^7\) 3 Powell, Real Property 261 (1966).
\(^7\) Professor Moynihan suggests that the rule prohibiting remainders to heirs was simply a "natural corollary" to a thirteenth century statute making illegal a conveyance by a tenant to his heir apparent. Moynihan, Real Property 152 (1962).
\(^7\) Of course, in the event that the heirs were not totally ascertainable the rule could be avoided (if at all) only with difficulty.
\(^7\) Fennick and Mitford's Case, 1 Leon. 182, 74 Eng. Rep. 168 (K.B. 1589).
B. Legal Significance of the Inter Vivos Branch

The inter vivos branch may operate to determine not how a person will take, as is the case with the wills branch, but if he will take at all. Consider the following example. A deeds property to B for life, remainder to A's heirs. Subsequently, A conveys the same property to C. Assuming that B has complied with the formal requirements of the recording statutes, under normal circumstances C would take nothing. More so in this instance according to the doctrine of worthier title. The remainder to A's heirs is not effective, and A has retained a reversion. The subsequent deed to C, therefore, conveyed this reversion, and upon the termination of B's life estate, C will take possession as an owner in fee simple. In this situation the "old argument advanced by the English courts that the heirs must take by descent and not by purchase has a very hollow sound."

The doctrine may have some interesting effects when considered in conjunction with the federal estate tax law. If, for instance, using the example above, A had died holding his reversion, that interest would be taxable to his estate under the general provisions of section 2033. More importantly, if this reversion is worth more than 5% of the property transferred, section 2037 causes the entire interest, not just the reversion, to be included in the taxable estate. By inadvertently and unknowingly retaining an interest in his property, a grantor can thus cause the entire value of that property to be subjected to tax liability.

As a rule of law, the inter vivos branch has virtually nothing to recommend it. Commentators have universally denounced it as an intent-defeating trap which had relevance, if ever, only to an economic system alien to the American system of government. Dissatisfaction with the rule's arbitrary character has led to judicial modification.

C. A Rule of Construction

In the famous case of Doctor v. Hughes, Mr. Justice (then Judge) Cardozo injected into American law the version of the doc-

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74 Actually, even if the heirs are in by purchase, A has retained a divestible reversion because the remainder is contingent. C would therefore take this interest under the second deed.
75 Morris, The Inter Vivos Branch of the Worthier Title Doctrine, 2 OKLA. L. REV. 133, 161 (1949).
76 INT. REV. CODE OF 1954, § 2033.
77 INT. REV. CODE OF 1954, § 2037.
78 See Beach v. Busey, 156 F.2d 496 (6th Cir. 1961), cert. denied, 329 U.S. 802 (1947). For a discussion and analysis of this case, and other tax consequences of the rule, see Johanson, Reversions, Remainders, and the Doctrine of Worthier Title, 45 TEX. L. REV. 1, 16 (1960).
79 However, since reversionary interests are not subject to the Rule against Perpetuities, an application of the inter vivos branch might save a limitation to the heirs of the grantor. Cf. Fletcher v. Ferrill, 216 Ark. 582, 227 S.W.2d 448 (1950). Assuming an avoidance of the Rule against Perpetuities is a desirable result, the rule has a salutary effect in this instance.
80 See, e.g., LEACH, PROPERTY LAW INDICATED 54 (1967).
81 225 N.Y. 305, 122 N.E. 222 (1919).
trine which is approved by many courts today. The court was called upon to construe a trust instrument. The settlor had placed certain real property in trust, reserving to himself the income therefrom for life, and upon his death the trustee was directed to deliver the corpus "to the heirs at law" of the settlor. After an extensive discussion of the rule, the court concluded that "the rule persists today . . . as a rule of construction." Judge Cardozo explained:

[The ancient rule survives to this extent, that to transform into a remainder what would ordinarily be a reversion, the intention to work the transformation must be clearly expressed.]

The case created a presumption that a remainder to the heirs of a grantor is a reversion, unless a "clearly expressed" intent to the contrary is discovered. Judge Cardozo claimed that this effectuated the intent of the transferor: 

"[S]eldom do the living mean to forego the power of disposition during life by the direction that upon death there shall be a transfer to their heirs."

Many courts have since followed the rebuttable-presumption approach proposed by Doctor v. Hughes. The case no doubt represents a vast improvement over the common-law rule. It recognizes that heirs can, in some instances at least, take as purchasers. The Doctor rule has, however, proved difficult to apply. Just exactly how much evidence of what nature is required to rebut the rule’s conclusion has been the subject of much debate and discussion in the cases. Thus dissatisfaction with the judicial doctrine, both as a rule of construction and a rule of law, has led to legislative action.

C. Statutory Abolition

Most commentators claim that the doctrine of worthier title was abolished in England in 1833. The first statute which

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82 Id. at 311, 122 N.E. at 222.
83 Id. at 312, 122 N.E. at 222.
84 Id. at 312, 122 N.E. at 223.
85 As a rule of property, the doctrine has virtually been abandoned. The rule "is now only a rule of construction, not a positive rule of law." 1 AMERICAN LAW OF PROPERTY 440 (1952).
87 One writer has concluded, after reviewing the New York cases, that there is one method of analysis which can be employed fairly reliably to predict the outcome of each case:

This writer’s analysis confirms that a pattern is unmistakably present. . . . The . . . box score for fifty-seven reported decisions is:

Odd years: reversions 15, remainders 15
Even years: reversions 19, remainders 8

To be on the safe side, attorneys representing the remainders (in New York, at least) would be well advised to plan their appeals so as to avoid those even years.

Johanson, supra note 78, at 11, n.38.
88 See, e.g., SIMES & SMITH, FUTURE INTERESTS § 1612 (1956) citing 3 & 4 Will. IV, C. 106, § 3 (1833). The statute clearly abolished the testamentary branch of the rule. However, the portion relevant to inter vivos
clearly abolished the doctrine was enacted in Minnesota—more than one hundred years later. Five other states have since abolished the doctrine; most abandoned the rule both as a rule of law and a rule of construction. Four of these five states have enacted their statutes within the last decade. There is thus a kind of minor legislative revolution here.

The most significant development is the abandonment of the doctrine as a rule of construction in New York. Last year, the New York legislature enacted the following statute:

Where a remainder is limited to the heirs or distributees of the creator of an estate in property, such heirs or distributees take as purchasers. 

Doctor v. Hughes is therefore no longer the law even in New York. The decision was based on an assumption the validity of which was not directly demonstrable at the time. Later cases did not succeed in lending much credence to its correctness.

Even conceding the underlying validity of the assumption made in Doctor, legislative action was desirable. Despite the earnest efforts of the New York courts to formulate a rule which would produce predictable results, no such formulation was forthcoming. The statute can be fairly characterized as the result of legislative dissatisfaction with the rule's uncertain operation.

transfers provides:

When any Land shall have been limited, by any Assurance executed [after the effective date of the act] 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 by virtue of such Assurance.

Note that the statute does not by its terms allow a grantor's heirs to take as purchasers. The act was probably aimed at modifying the effects of the first purchaser rule, not the inter vivos doctrine of worthier title. There is dictum supporting this interpretation in Strickland v. Strickland, 10 Sim. 374, 59 Eng. Rep. 659 (Ch. 1839):

Consequently, if a person seized of land by descent . . . were to execute a conveyance limiting property to himself and his heirs, he would be considered thenceforth as taking the land by purchase, and the course of descent would be altered.


91 The wording of the Texas statute lends itself to a construction which would allow a court to apply the rule-of-construction approach. See Johanson, supra note 78, at 5.

92 New York (1966); Texas (1964); California (1959); Illinois (1955).

93 N. Y. Est. Powers & Tr. L. § 6-5.9 (1966).

94 In reviewing the later New York cases, it has been concluded that "the Cardozo statement that the rule finds support in the assumed intention of the grantor is repeated without analysis or enthusiasm." Verral, The Doctrine of Worthier Title: A Questionable Rule of Construction, 6 U.C.L.A.L. Rev. 371, 386.

Rules of property, however, are abrogated only with difficulty. The New York statute, while it appears to have covered the previous New York cases quite adequately, may have only partially repealed the rule. The statute applies exclusively in cases where the limitation in question is a remainder. It is true that in most cases the rule operates to transform a remainder into a reversion. However, the rule is not concerned solely with remainders; it applies to any kind of limitation to heirs of the grantor. Thus the doctrine can also transform an executory interest into a possibility of reverter. Presumably, the New York statute would not apply in this situation. This omission by the New York legislature, one suspects, was inadvertent. No more valid reasons for the rule exist when an executory limitation is created than when a remainder is involved.

D. The Arkansas Cases

The text writers and commentators uniformly include Arkansas among the handful of jurisdictions which still cling to the doctrine as a rule of property. The case universally cited for this proposition is Wilson v. Pharris.

In Wilson, the court had before it a deed which, after a grant of a life estate to the grantor's daughter, contained the following proviso: "[B]ut should said [grantee] marry, or at her death, the . . . land to revert to the said grantor's heirs." The grantor subsequently reconveyed the same property to her daughter in fee simple, and died intestate. During the daughter's lifetime, an action to quiet title was instituted. She claimed fee simple title under the second deed. The other heirs of the grantor claimed as tenants in common with the daughter as remaindermen under the first deed. The trial court ruled that the first deed created a contingent remainder in the grantor's heirs, and the second deed was thus ineffective.

The Arkansas Supreme Court, relying on cases from Illinois and Kentucky, reversed the lower court. They found instead that the first deed created a reversion in the grantor. The result seems sound; the grantor's use of the word "revert" seems good evidence of an intention to retain a reversion rather than to create a

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86 See, e.g., Coomes v. Frey, 141 Ky. 740, 133 S.W. 758 (1911); In re Brolasky's Estate, 302 Pa. 439, 153 A. 739 (1931). But see 27 HALSHEMI, LAWS OF ENGLAND 723 n. (r) (Hailsham ed. 1937).
87 None of the other statutes listed in note 90 supra contains this defect.
88 See 3 POWELL, REAL PROPERTY 264 (1966); 1 AMERICAN LAW OF PROPERTY 441 (1956); SIMES & SMITH, FUTURE INTERESTS § 1605 (1956); Morris, supra note 75, at 143.
99 203 Ark. 614, 158 S.W.2d 274 (1941).
100 Id. at 615, 158 S.W.2d at 275.
101 The grantor had died and therefore the remainder had vested; there was no difficulty in ascertaining the identity of the remaindermen.
102 Even if the heirs took as purchasers, an application of the destructibility rule would destroy their interest. The daughter took a life estate under the first deed and a divestible reversion under the second; the two would merge to defeat the heirs' contingent remainder. The court apparently did not consider this possibility. See generally Fetters, The Destructibility of Contingent Remainders, 21 Ark. L. Rev. 145 (1967).
remainder in her heirs. However, the court's rationale was unfortunate. Wilson came dangerously close to injecting into Arkansas law the doctrine of worthier title as a rule of positive law.

The court quoted with apparent approval from Washburn on Real Property:

At common law, if a man seized of an estate limited it to one for life, remainder to his own right heirs, they would not take as remaindermen but as reversioners; and it would be, moreover, competent for him, as being himself a reversioner, after making such a limitation, to grant away the reversion.

No doubt the above quotation furnishes the basis upon which the text writers have classified the rule as one of law in Arkansas.

However, it is arguable that the common-law rule was not applied here. First, the court cited Alexander v. DeKernal as authority for its holding. That case unequivocally rejects the rule-of-law approach:

Alexander did not even accept the Doctor rationale. The case plainly turns on the use of the word "revert" in the deed. The court here relied on ordinary rules of construction to reach its result.

Second, the other case relied on, Akers v. Clark, although it contained language indicating a rule-of-law approach, recognized that the result would have been the same even if an arbitrary rule of law were not applied:

Without, however, rejecting any word in the conveyance, by the terms of the deed the heirs would take as reversioners, and not as remaindermen.

Additionally, at least one commentator claims the Akers case applied the rule as one of construction. Again, as in Alexander

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103 "Some courts have found a clear intention to retain a reversion where the instrument provides that after the death of the life tenant the property shall 'revert' to the heirs or next of kin of the grantor." Morris, The Inter Vivos Branch of the Worthier Title Doctrine, 2 OKL. L. Rev. 133, 155 (1949).

104 WASHBURN, REAL PROPERTY 395 (1887), quoted in Wilson v. Pharris, 203 Ark. 614, 617, 158 S.W.2d 274, 276 (1941). The court also quotes from 23 R.C.L. 1100 (1919); the quotation is virtually identical to the one from WASHBURN.

105 81 Ky. 345 (1883).

106 Id. at 349.

107 The case of course antedates Doctor v. Hughes by 36 years.

108 184 Ill. 136, 56 N.E. 296 (1900).

109 56 N.E. 297 (1900).

110 A note in 40 ILL. L. Rev. 404 (1940) criticizes Corwin v. Rheims, 390 Ill. 205, 61 N.E.2d 40 (1945) for rigidly applying the rule, and says that the Illinois cases had previously recognized the rule as one of construction.
der, this case certainly did not adopt the rebuttable-presumption approach of Doctor. If the rule as one of law was in fact rejected, then ordinary rules were resorted to in an effort to determine the grantor's intent.

Third, the language which the Arkansas court employed in characterizing its task gives further credence to the proposition that the rule applied was not one of law. The court said: 'The decision of this case turns, of course, upon the construction of the deeds . . . '111 Clearly, if it were legally impossible to create a remainder in the heirs of the grantor, the court would have little occasion to construe the deed.112

A later Arkansas case, Fletcher v. Ferrill,113 virtually explodes any thesis that the rule exists in its common-law form in Arkansas. The court had before it a deed executed to a masonic lodge. After reserving a life estate, the grantor J. W. Fletcher provided that the property be used exclusively for the benefit of a specified orphans' home and school, with a further proviso that:

When it ceases to be so used, or when said home and school shall be moved from Batesville, Ark., said property shall revert to the heirs of J. W. Fletcher.114

The court assessed the difficulty which the deed presented as follows:

The principal question is whether the language of the deed, "said property shall revert to the heirs of the said J. W. Fletcher," created (a) a possibility of reverter in Fletcher himself or (b) an executory limitation to Fletcher's heirs . . . .115

The language above is, of course, completely inconsistent with a rule of property which refuses to admit the possibility that a grantor's heirs can take as purchasers. The court further states that "the inquiry really narrows down to whether the word 'heirs' is here a word of limitation or one of purchase,"116 it was simply conceded that the heirs of a grantor can take as purchasers.

The deed was construed to create a possibility of reverter rather than an executory interest. But in deciding the case the court did not woodenly refuse to recognize heirs as purchasers. It arrived at its conclusion by employing the ordinary methods of construction.

Id. at 411. Akers is cited in support of that thesis. The nature of the rule in Illinois, prior to its abolition in 1955, was uncertain. Simes & Smith, Future Interests § 1609 (2d ed. 1956).

112 Admittedly, even in those jurisdictions where the rule is one of law, there are certain preliminary questions of construction which must be answered before the rule is applied. See, e.g., text accompanying note 116 infra. But the court did not indicate that it viewed its construction task as only preliminary.
113 216 Ark. 583, 227 S.W.2d 449 (1950).
114 Id. at 584, 227 S.W.2d at 449.
115 Id.
116 Id. at 585, 227 S.W.2d at 450.
The *Fletcher* opinion makes absolutely no mention of the doctrine of worthier title—either as a rule of law or a rule of construction. It is therefore arguable that the case can serve no basis for the thesis that the common-law rule is not a part of Arkansas law. Perhaps the court was simply oblivious to the doctrine. A real rejection naturally requires cognizance of the rule rejected. It is certain, however, that the case does not recognize the rule as part of Arkansas law. Furthermore, the court cites Wilson as authority for its holdings. It must have regarded that case as in accord with the principle that the grantor's intention shall govern in deed cases. The court is, after all, the final interpreter of its own prior decisions. Therefore, the proposition that the inter vivos branch exists in its common-law form in Arkansas is seriously questionable.

One other Arkansas case seems apposite. In *Shirey v. Clerk*, the grantor A. W. Clark conveyed the property to his wife Emily for life, and after her death "then to the heirs of the said A. W. Clark by the said Emily Clark." Emily died, and A. W. Clark subsequently conveyed the same land to A. W. Shirey. The court ruled the second conveyance ineffective.

According to the court, Shirey's counsel argued that "a deed to the heirs of a living person is always held void;" the court responded that this statement of the law might be correct. Perhaps as to present interests this proposition is correct. As to future interests there is of course no such rule. The general rule is that a remainder to the heirs of a living person is, during the lifetime of that person, contingent. If that person dies before the termination of the supporting estate, the remainder vests in right. If the supporting estate falls in before that person dies, applying the destructibility rule, the remainder fails for want of persons to take. The divestible reversion retained by the grantor ripens into a fee but the remainder interest is not void; it is simply not vested and may fail. In addition to this general rule, there exist two specific exceptions which do void remainders created in the heirs of a living person. One is the rule in Shelley's case which plainly has no application here. The other is the doctrine of worthier title.

117 72 Ark. 539, 81 S.W. 1057 (1904).
118 Id. at 540, 81 S.W. at 1057.
119 Id. at 543, 81 S.W. at 1058.
120 AMERICAN LAW OF PROPERTY § 12.40 (1952); DEVLIN, DEEDS § 184 (1887). However, it is difficult to see why the property should not result to the grantor subject to an executory interest in favor of the heirs when they become ascertainable.
121 The difference between the Rule in Shelley's Case and the doctrine of worthier title is not always appreciated by the courts. The most frequently cited example of this confusion is Sutliff v. Aydelott, 373 Ill. 633, 27 N.E.2d 523 (1943), noted in 35 ILL. L. REV. 590 (1941). For a thorough examination and discussion of the differences in the scope and operation of these two rules, see Morris, *supra* note 103, at 167. There is some disagreement among the authorities as to whether some situations might call for an application of both rules. Professor Simes says that some do. Simes & Smith, *supra* note 110, at § 1607. Professor Moynihan suggests that Pro-
However, the doctrine of worthier title operates only when the word "heirs" is used in its technical sense. It has no application when the word is used to denote "children." This case nicely illustrates the point. The court concluded that the words "heirs of the said A. W. Clark by the said Emily Clark" could have no other meaning than "children." The doctrine would therefore have no application. Had the doctrine been applied, the conveyance to Shirey would have been effective.

E. Summary

The common-law inter vivos branch of the doctrine of worthier title stated that a limitation to the grantor's heirs was void; the grantor instead retained a reversionary interest. Many modern courts have rejected that approach and have substituted for it a rebuttable presumption of reversion. The modern rule is ostensibly bottomed on a desire to accomplish the grantor's intent. Whether its underlying assumption is valid is seriously questionable. In any case the modern rule has proved difficult to apply, and legislatures are responding by abolishing it. Under these statutes, heirs take as purchasers.

The nature of the Arkansas rule is uncertain. One case contained language indicative of a rule-of-law approach. A later case, relying on the first case as authority, is plainly inconsistent with the common-law rule. In any event, the rebuttable-presumption rule is clearly not a part of Arkansas law.

III. Conclusion

Arkansas law has not been bothered much by either branch of the doctrine of worthier title. The wills branch has been virtually ignored. The inter vivos branch, though its status is uncertain, has probably never affected the result of any decision. The only case which seems to recognize its existence would have reached the same conclusion, whether the rule applied was one of law or one of construction. In fact, the outcome of that case would probably stand even had the inter vivos rule, in both its forms, been abolished by statute.

This fortunate state of affairs cannot, in light of other states' experiences with the doctrine, be expected to continue for long. Since a judicial rejection of the rule would hardly unsettle many estates planned in reliance on it, the Arkansas court might see fit, if the issue were raised directly, to repudiate it. In the meantime, however, the uncertainty which the doctrine would shed over a portion of Arkansas's property law could well cause complications. A title examiner would be hard pressed to give a definitive answer to a question involving its significance.

Legislative clarification seems imperative. The wills branch has never proved useful in any jurisdiction. It serves a purpose

Professor Simes's conclusion is not correct. MOYNIHAN, supra note 71, at 161. The reader may take his choice.
which perhaps endeared it to a medieval mind; it can serve today only to obfuscate. The inter vivos branch, in its common-law form, has nothing to recommend it. As a prima facie canon of construction, it has proved unworkable. New York's decision to abolish it is strong evidence of its elusive nature.\textsuperscript{122}

The defects in Arkansas's property law are not, however, limited to the small area occupied by the doctrine of worthier title. Professor Fetters has pointed this out and has cautioned that "piece-meal reform may create more problems than it solves."\textsuperscript{123} For instance, in Wilson the same result could have been reached by an application of the destructibility rule. Thus the salutary effects of abolishing the worthier title doctrine might, in some cases at least, be diluted by the untimely exhumation of another outmoded rule of property. Until a comprehensive property act is enacted in Arkansas, Mr. Justice McFaddin's plea that "the intention of the parties should govern, rather than any hard and fast formulae anciently established"\textsuperscript{124} may remain largely unheeded.

\textbf{Morris S. Arnold}

\textsuperscript{122} Professor Verrall suggests the following statute:
The rules of worthier title, both as rules of law and as rules of construction as applied to limitations to heirs or next of kin of conveyors or testators or to limitations having such meaning though not employing such terms, are abolished and the meaning of such limitations shall be determined by the general rules controlling the construction of conveyances or wills.


\textsuperscript{123} Fetters, The Destructibility of Contingent Remainders, 21 Ark. L. Rev. (1967).

\textsuperscript{124} McFaddin, J. dissenting in Bishop v. Williams, 221 Ark. 617, 620, 255 S.W.2d 171, 173 (1953), a case involving the Rule in Shelley's Case. See Note, 7 Ark. L. Rev. 411 (1953).