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Wills-Rule in Shelley's Case

WILLS—RULE IN SHELLEY'S CASE—A will provided for a farm to be divided equally among the testator's three children. "Each third of said

farm to be held by said three last named heirs severally. Each his own one-third during his life time and at their death to become the property in fee-simple of their respective heirs." The plaintiff, the son of one of the said children, by his complaint, asserts that he is the owner in fee-simple of one-third of the farm, subject to the life estate. There was a demurrer to the complaint. *Held:* demurrer sustained. *DeLawter v. DeLawter*, Appellate Court of Indiana, Jan. 8, 1930., 169 N. E. 472.

When an ancestor, by any gift or conveyance, takes an estate of freehold, and, in the same gift or conveyance, an estate is limited to his heirs in fee or in tail, the words "the heirs" are words of limitation of the estate of the ancestor. This rule was recognized in the law as early as 1324. *Abel's Case*, Y. B. 18 Edw. 2, 577. It is known as the Rule in Shelley's Case, so called from a famous case in Lord Coke's time. *Shelley's Case*, 1 Coke 93. The Rule in Shelley's Case is a rule of property and not a rule of construction. *Teal v. Richardson*, 160 Ind. 119; *Allen v. Craft*, 109 Ind. 476. That is, once it is settled that the persons to whom the remainder is given are the heirs of the ancestor (a question of construction which does not arise in this case because of the use of the express term "heirs"), then the rule of Shelley's Case is imperative. *Gibson v. Brown*, 62 Ind. App. 460; *McCllen v. Sehker*, 70 Ind. App. 435. There has been a tendency in the Indiana Supreme Court, however, to modify this view to the effect that the rule of Shelley's Case will not be allowed to defeat the plain intention of the testator. *McMahan v. Newcomer*, 82 Ind. 565; *Earnhart v. Earnhart*, 127 Ind. 397. The earlier cases were much more liberal in their application of the rule than the later cases. 3 Ind. Law Journal 642. The rule was adopted in Indiana by the statute adopting the common law. Burns' 1926, Sec. 244; *Sicaloff v. Redman*, 26 Ind. 251. At the present time the rule is in force in England, Canada, Arkansas, Delaware, District of Columbia, Florida, Illinois, Indiana, Maryland, Nebraska (restricted form), North Carolina, Ohio (not applicable to wills), Pennsylvania, South Carolina, and Texas. In all other states it has been abolished, in practically every case by statute. J. A. B.