

Conference Committee on January 20, 1991 - Page

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks

report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

CONFERENCE COMMITTEE ON HB 3375

June 20, 1991Hearing Room E 9:30 a.m.Tapes 1

SENATE MEMBERS PRESENT: Sen. Brockman Sen. Cohen Sen. Shoemaker

HOUSE MEMBERS PRESENT: Rep. Campbell, Chair Rep. R Johnson Rep. Mason

STAFF PRESENT: Greg Chaimov, Committee Counsel Jeff Steve,  
Committee Assistant

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TAPE 1, SIDE A

001 CAMPBELL: Opens Conference Committee on HB 3375 at 9:34 a.m.

The Senate amended the bill to remove the Rule in Shelley's Case which was placed in the bill in the House.

Explains how the Rule in Shelley's Case works and the origins of the Rule.

Gives scenarios.

The elimination of the Rule will allow a contingent remainder to a life estate, but when you allow the contingent remainder to the life estate it is hard to determine who has the rights and the property if the owner of the life estate decides to sell his or her rights.

The purpose of establishing the life estate is to pass that property one level down. If the Rule in Shelly's Case had been a substantial participant in law suits or cases in the state, I would find some of the same concerns that have been raised by a member of the bar association.

Believes there is enough justification and potential need to eliminate the law. Believes the law is an appendix which does nothing but create problems in the types of cases I have cited. For that reason, the House would like to have the Senate reconsider the action by which they removed the information from the bill when it came to them for action.

071 SHOEMAKER: There are ways to avoid the rule if a lawyer who understands the Rule drafts the instrument.

If I give the property to you for life, then to your children, as opposed to your heirs, I am not sure the Rule applies.

090 CHAIR CAMPBELL: The witnesses appearing are considered expert witnesses and not proponents or opponents of the bill.

094 CHRIS GORSUCH, OREGON STATE BAR: We reviewed HB 3375 without the amendment which had to do with the elimination of some restrictive covenants. That seems to be a reasonable way to deal with some offensive and illegal covenants.

We became involved when the amendment was added and the Senate Judiciary Committee had its hearing at which I testified.

The Rule gives us some vesting of title and certainty in who owns property and how it can be conveyed. Believes that is the reason for the Rule. Without the Rule, it is difficult to know how to get a deed from someone who has a deed that says "To Gorsuch and his children" because we don't know until I die who my children are, or if that means living, adopted, or deceased children.

Taking out the Rule would create problems in conveyancing.

The consequences of the Rule in Shelley's Case can be avoided by:

> Being more specific in the deed > Putting the property in trust

150 SHOEMAKER: Does the Rule apply if the Deed says "to A for life and then to his children"?

152 GORSUCH: Thinks it does.

156 SHOEMAKER: If the grantor has an attorney who practices in this field, you can achieve the intention of the grantor with or without the Rule. If you do not have an attorney, the person does not think in the term "heirs".

165 CRAIG CAMPBELL: The Rule applies if you use the term "heirs" or "children" as long as you identify that it is to an individual for a life estate and the remainder to the heirs or children.

171 GORSUCH: Has not been able to find Oregon cases on this Rule. That may be because the Rule works.

193 JOHNSON: Does the Rule still apply if you enumerate children by name in the will?

199 GORSUCH: Does not believe so.

210 CRAIG CAMPBELL: Understands the Rule only comes into operation if you use the term "to A for life, then to the children or heirs".

221 JOHNSON: What if we said "To A's children, reserving unto A the use of the property for so long as he lives"?

226 CRAIG CAMPBELL: Believes that as long as you are establishing a life estate, the Rule would apply to non-determinant heirs or children.

When an individual who is not a lawyer writes a deed and uses non-determinant language he thinks he is creating a life estate with the remainder in the children. That will not happen. The individual who is to take the life estate has the whole right in the property and can dispose of it in any way he sees fit.

Discusses situations and possible solutions.

Abolishing the Rule in Shelley's Case does not mean you are creating the only way of creating a life estate. A life estate can be created under present law without using any of the wording involved in the Rule of Shelley's Case.

313 SHOEMAKER: In states that have abolished the Rule, if a child died in the interim does that child's heirs share his estate or does it go to those alive at the time of the death of A?

320 CRAIG CAMPBELL: Unable to answer the question.

Oregon has intestate succession provisions which says where money goes upon a person's death.

338 SHOEMAKER: Is troubled that if we abolish the Rule without due thought, we might create another problem.

342 CHAIR CAMPBELL: Suggests that additional exploratory work be done by Campbell and Gorsuch on other states' experience before the Conference Committee meets again.

350 GORSUCH: Is unavailable.

Concerned that when making a change such as this, it might be helpful to review it in greater detail than could be done in a couple of days.

386 CHAIR CAMPBELL: Chapan Clark has done a lot a research on this. Thinks the bill needs to proceed, but further research is needed.

Adjourns Committee at 10:03 a.m. asking members to be on call.

Submitted by,

Pat Zwick