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Commentaries

Irreverent Verse[†]

(Plus Some Irrelevant as Well)

*George R. Craig**

I have a high opinion of lawyers. With all their faults, they stack up well against those in every other occupation or profession. They are better to work with or play with or fight with or drink with than most other varieties of mankind. HARRISON TWEED.

Should a lawyer's interests be restricted to "Dull books that whisper of a thousand wrongs; sad tomes with dirges only—never songs?"

Answered in the negative by the members of the Law Club of Pittsburgh.¹

THE RULE IN SHELLEY'S CASE²

(Ave atque Vale)

Every lawyer has had to face
The famous old Rule in *Shelley's Case*.
But few can state with much precision
The background of that old decision.
So if you will all please bear with me
I'll tell you just how it came to be.

Ed Shelley purchased a large estate
To him for life, and when he met Fate
The remainder interest would entail
To such of his heirs as should be male.
Henry and Richard were Edward's sons—
Two fine young men, so the story runs.

† The following verses are reprinted with permission from the *Pittsburgh Legal Journal: A Toast to Robert Earp; The Rule in Shelley's Case; The Testator's Easy Chair*.

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1. Most of the doggerel which follows has been written for and read to the members of the Law Club of Pittsburgh—a group of lawyers (some of them robed) with whom I have worked, played, fought and drunk for lo these many years—and is respectfully dedicated to them.

2. See *Wolfe v. Shelley*, 76 Eng. Rep. 206 (1581).

Henry married and had a daughter
 Which didn't muddy up the water
 Because conditions of these entails
 Were all strictly limited to males.
 So, Henry failing to have a son,
 His brother Dick was the favored one.

Soon Henry's wife was with child again
 In hopes of a son for good old Hen.
 But Henry died with his wife expecting—
 Then Edward died—and, not respecting
 Henry's widow's pregnant condition
 Young Richard claimed the heir's position.

But in due time and to her great joy
 Henry's widow gave birth to a boy.
 This posthumous son—the new male heir—
 Said to his uncle "Move over there!
 My lawyer, Coke, a most learned gent
 Says 'heirs' means *not* purchase, but descent."³

The judge was seized with consternation—
 What should be his determination?
 And so was the queen—the good Queen Bess
 Greatly perturbed, so she said "I guess
 I'd best assemble *all* the judges
 And let them figure out who budges."

So all these judges, sanctified guessers,
 Greatest down to the lesser lessers,
 Full knowing that any child en vent
 Couldn't take by purchase but could by descent,
 Decided that's what Ed's title meant
 So the child eased out the older gent.

All this was in fifteen eighty-one
 In the day of Coke on Littleton—
 Days when the law its strong arm lent
 Perpetuating lines of descent.
 And so, in law school, *we* had to face
 That troublesome Rule in *Shelley's Case*.

England, finally, by God's good grace
 Abandoned the Rule in *Shelley's Case*
 And many states also followed suit
 By giving the Shelley Rule the boot.
 But despite this general rebuff
 Law students still must learn this stuff.

3. COKE, INSTITUTES OF THE LAWS OF ENGLAND (c. 1600).

A TOAST TO ROBERT EARP⁴

Come, brothers all, give your drinks a slurp
And join in a toast to Robert Earp.

In eighteen hundred and forty-eight
His will established a trust estate
With income to some 'til their demise
Then corpus to certain other guys.

Executors opened Robert's box
And found there various shares of stocks
Whose dividends had been kept quite low
To permit a large surplus to grow.

Those companies studied their affairs
Then increased the number of their shares—
Applying surplus to pay for same
They put more shares in Earp's trustee's name.

So thus a legal morass appears
Which baffled the courts for a hundred years
"Who gets the stock issued thru this plan —
The life tenant or remainderman?"

Our High Court really played it cool—
It announced the Pennsylvania Rule
And set the arguments raised at rest
By using the "intact value" test.⁵

The Restatement of the Law of Trusts⁶
Defended our Court with valiant thrusts
But later reached for a simpler tool
And changed to the Massachusetts Rule.⁷

A hundred years after Earp's decease
Our state legislature spoke *its* piece⁸
And tried to supply what *Earp's Case* lacked
With the Principal and Income Act.⁹

The Supreme Court read the Statute Book
But said in *Crawford's Estate*¹⁰ "Now look—
Although this new Act's quite attractive
You just can't make things retroactive."¹¹

4. See *Catherwood's Trust*, 405 Pa. 61 (1961).

5. *Earp's Appeal*, 28 Pa. 368, 372 (1848).

6. RESTATEMENT OF TRUSTS § 236(6) (1935).

7. RESTATEMENT (SECOND) OF TRUSTS § 236 (1948).

8. *Earp's Appeal*, 28 Pa. 368 (1848).

9. PA. STAT. ANN. tit. 20, § 3470.1 (1964).

10. 362 Pa. 458 (1949).

11. *Id.* at 467.

So that is where the whole thing stood
 'Til Justice Jones wrote in *Catherwood*¹²
 That the only cure at this late date
 Was to just up and bury *Earp's Estate*.¹³

With that the Supreme Court changed its view
 Reversing *Crawford, Warden*¹⁴ and *Pew*¹⁵
 And *Earp's Estate*, with a coup de grace
 Went under the rug like *Shelley's Case*.¹⁶

Now, come, my brothers, your elbows bend
 To this long departed lawyer's friend
 Whose trust contained such a novel quirk
 That it furnished years of legal work.

So Robert Earp—here's a toast to you
 Your last will ranks with the very few
 Which baffled judges and legal seers
 And earned us fees for a hundred years.

MEDITATIONS ON CERTAIN CORPORATE¹⁷ DISTRIBUTIONS

I'd just as lief
 Not read a brief
 On dividends or stock-splits.
 I much prefer
 A neat demurrer
 Or pleas to common counts writs.

The rule in Mass.
 Is a pain in the neck
 The New York rule is too.
 And then, again
 Down there in Penn.
 You can't tell what they do.

We here in Conn.
 Rely upon
 The Settlor's real intent.
 We read his mind
 And try to find
 Just what it was he meant.

12. *Catherwood's Trust*, 405 Pa. 61 (1961).

13. *Id.* at 78.

14. *Warden Trust*, 382 Pa. 311 (1955).

15. *Pew Trust*, 362 Pa. 468 (1949).

16. *Wolfe v. Shelley*, 76 Eng. Rep. 206 (1581).

17. A reply by Judge Charles S. House of the Superior Court of Connecticut to the *Robert Earp Toast*.

If that won't do
Chapter 782
Should govern every case.
In every trust
We always must
Preserve the sacred res.

It would appear
The law is clear
And yet opinions clash.
Oh Happy Day
When companies pay
Their profits all in cash!

“THE KNOWNE CERTAINTIE OF THE LAW IS
THE SAFETIE OF ALL”—Coke (c. 1600)¹⁸

Oh come now, m'lord, take a second look—
'Cause your platitude has now been forsook.
Chucking principles of every sort
Has become routine with each changing court.
And the only certaintie, so it seems,
Is the certaintie of reams and reams
Of loose-leaf pages which lawyers must face
In attempting to keep up with the pace.
We pull up the ring or we slide the slide
We spring out those claw-teeth extremely wide
We place new inserts before us neatlie
We read the instruction sheet compleatlie
We discard the old and insert the new
We work ourselves into an awful stew
We curse that careless instruction-drafter
For the missing sheet that this comes after
And before we have finished, sad to state,
This stuff may already be out of date.
With courts at stare decisis winking
Your platitude was wishful thinking.

THE TESTATOR'S EASY CHAIR

A cliché which has been worn threadbare
Is to “sit in the testator's easy chair”
There to see the things which surrounded him
And those he loved 'round the hearthfire dim—
To follow his hand with its feathered quill

18. COKE, INSTITUTES OF THE LAWS OF ENGLAND (c.1600).

As he, most thoughtfully, wrote his will
And thus interpret the words he used
To make confusion less confused.

Now a testator's chair you'll likely see
At Mellon or Union or P.N.B.
As a banker explains an A—B trust
Complete with marital clause—"A must"
Says this expert "If your will
Is to minimize the estate tax bill.
Add a spendthrift clause for your spendthrift son
And you've done your best by everyone."

A pre-stuffed typewriter then grinds out
The boiler-plate which will bring about
A marital clause of such precision
As to never reach the Appellate Division.
This typewriter, with its pre-stuffed brain
Grinds on to make it very plain
That discretion is lodged in the bank trustee
For everything from A to Z.

After comparing two sheets directly
To see that all names are spelled correctly
A copy is sent to the rich testator
Who shares the same with his good wife later
And she says "But, darling, I can't see
This Mellon, Union or P.N.B.
I don't understand these legal quirks—
Why can't you just leave me the works!"

The testator knows that he can't explain
To his wife with the non-taxconscious brain
Because, despite his self-earned pelf
He can't understand the damned stuff himself.
So he just resigns himself to fate
And goes to the bank at a later date
And seats himself in the *banker's* chair
And signs where the banker says "Sign there."

So I propose that we now despair
Of help from the testator's easy chair
And that judges, too, without delay
Forget all about this lame cliché
Today's testator is so much cuter—
He feeds *his* problems to some computer.
So when we come to interpretation
Let's solve the thing by automation.

AN ODE ON THE INVALIDITY OF DEVISES OR BEQUESTS FOR RELIGIOUS OR
CHARITABLE PURPOSES INCLUDED IN A WILL OR CODICIL EXECUTED
WITHIN THIRTY DAYS OF THE DEATH OF THE TESTATOR

The hope of Heaven or the fear of Hell
Caused the Church of England to do right well
In obtaining many a large bequest
As a guarantee of eternal rest.
So in George the Second's glorious reign
The then Parliament did by law ordain
That such a bequest simply would not clear
Unless the testator survived a year.

Much later our Commonwealth followed suit
By giving this type bequest the boot
But our state reduced the survival phase
From a calendar year to 30 days.
Then our new Wills Act of forty-seven¹⁹
Gave to these charities further leaven
By stating such gifts would be valid still
If shown in original prior will.²⁰

Then in nineteen hundred and sixty-five
Our Supreme Court kept a bequest alive
By decreeing an unsigned copy sheet
An original will—hence no defeat.²¹
So between legislatures and the Courts
And new constructions of various sorts
The force of that law, if any there be,
Becomes more difficult to see.

In this day and age there are very few
Of the clergy who'd urge the man in the pew
Into leaving his family in the lurch
By passing his wealth to that cleric's church.
So I would limit this 30-day test
To wives and children, and let the rest
Of intestate heirs seeking someone's wad
Prove that the gift was obtained by fraud.
Some other states now embrace this view —
I move Pennsylvania adopt it, too.

19. PA. STAT. ANN. tit. 20, § 180.7 (1964).

20. *Id.*

21. Baum's Estate, 418 Pa. 404 (1965).

AN ODE TO A COMMON PLEAS JUDGE WHO DISTINGUISHES GOOD GIRLS
WITH FALLEN STOMACHS FROM FALLEN GIRLS WITH GOOD STOMACHS²²

Oh this Common Pleas Judge he says, says he,
That those sheltered from life—like you and me—
Are guilty of reasoning fallacious
In assuming anything salacious
Or disparaging of some lone girl's virtue
Who visits Club 30 after curfew.

But this Common Pleas Judge, *he* knows what gives—
Knows about how our night life lives—
Knows about hustlers and call girls and such
And writes of them with such a delicate touch
Piercing the veil which hid *us* from the mystery
Of the most sought-after profession in history.

Oh this Common Pleas Judge lights up our day
By writing in such a knowing way
Distinguishing the mere flirtatious
From actions more or less salacious
No judge writes better—no judge could—
Re visits to night clubs by womanhood.
Whence comes *his* knowledge of these haunts?
Honi soit qui mal y' pense!

AVE ATQUE VALE, KALAMAZOO²³

The greatest error ever erred
Is fascination with one word—
A statement which is doubly true
When that one word is "Kalamazoo."

So heed my warning, all of you,
As o'er appellate briefs you stew:
Unless contempt is within your view
Never refer to Kalamazoo.

What consternation you would brew
Among our High Courts' present crew
If, perchance, you referred anew
To precipitation in Kalamazoo.

So confine yourselves to Timbuctu
To Maine, Alaska or Malibou
To Argentina, Brazil, Peru
But never, never, Kalamazoo.

22. See *Goffner v. Yellow Cab Co.*, 41 D. & C.2d 675 (1967).

23. See dissenting opinion in *Bertera v. Masters*, 428 Pa. 20 (1967).

So Kalamazoo, a fond adieu
We don't hold nothin' against you
But there's one Court where it wouldn't do
To ever mention Kalamazoo.

THE RETIREMENT ACT OF '62²⁴

As an aging lawyer, self-employed,
I confess that I am sore annoyed
And bothered and baffled by the new
Retirement Act of '62.

I'm told that if I save up to ten
Percent of earnings why *maybe* when
I'm so old that I can just relax
It *might* come back at a lower tax.²⁵

But if some client then up and dies
Who has an estate of handsome size
Why my then tax bracket might be such
That this tax *relief* costs me *twice as much*.

Oh why am I my own employer?
I might have been a "captive" lawyer
Retired to Florida on a pension
And spared of all this apprehension.

So, thanks, dear Democrats, thanks so much—
Your care for me my heart doth touch—
But 'till you get some *real* plan perkin'
I think I'll have to keep on workin'.

24. See INT. REV. CODE OF 1954, § 404(a)(10).

25. *Id.*, §§ 401-405.