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## Current Law Review Digest Series

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It seems to be generally held that parking meter ordinances do not interfere with the general public's easement of travel. The courts holding that although the easement cannot be taken away it is subject to reasonable regulation.<sup>12</sup>

*Hal E. Hunter, Jr.*

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## CURRENT LAW REVIEW DIGEST SERIES

**SIMPLIFICATION OF FEDERAL TAX LAWS.** Randolph E. Paul, *Cornell Law Quarterly*, March, 1944.—In this article the author deals with a subject of interest to all taxpayers. He makes it clear from the beginning that the problem is a big one. There are many kinds of simplifications which could take place in our tax system, including simplification of concept and language; in addition there are levels of simplification. Whatever the problem, however, the taxpayer must have a clearer understanding of our revenue system.

After commenting on the 1943 income tax return form and its complexity the author notes the simplification of the 1943 Revenue Act. It eliminated earned income tax credit; repealed the so-called second windfall provision of the Current Tax Payment Act of 1943, and removed numerous excise tax exemptions.

Mr. Paul then discusses other treasury suggestions for simplification, which follow: more understandable forms, consolidation of normal tax and surtax, and graduated withholding. He also calls for the repeal of the Victory Tax, which has since been stricken out as such, though it now comprises what is called the normal tax. In addition he asks for simplification for the businessman saying, "The whole corporate tax structure needs overhauling; we need better integration between the personal and the corporate tax. The bankruptcy act has to be coordinated with the tax law."

The next section concerns the importance of simplifying estate and gift taxes, even though the number of people they effect is few. The gift tax was ostensibly designed to prevent the avoidance of the estate tax in addition to the income tax. In order to accomplish this purpose a tax would yield little revenue. Through disparity in rate, double exemptions, and an annual gift tax exclusion it has failed as a "policeman tax." After pointing out other errors of the estate and gift taxes, Mr. Paul warns us to take care in revising them, saying, "The time has passed when we could afford the luxury of sitting by and watching our revenue system grow like Topsy."

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<sup>12</sup> *State v. McCarthy*, 171 So. 314, 126 Fla. 433 (1936).

The author further points out that our tax system has black sheep occasionally, and brings forth the declared-value excess profits tax as an example. This tax has frequently been blamed for frightening potential venture capital into "safer" investment outlets. The productivity of the corporation income tax, however, offers at least partial compensation for its fault. In 1936 the administration made an attempt to de-emphasize the taxation of corporations as such; under the plan corporate income would have been taxed only once, either as individual income or as undistributed profits. Because of a faulty compromise forced by the Senate, the undistributed profits tax died after a short period of invalidism. Today the corporation income tax is at its all time peak. The author offers the deduction of preferred dividends and common dividends from surtax net income as a possible solution. Mr. Paul concludes by driving home the fact that taxes can be simplified only to a certain point in our complex society.

This article offers some concrete provisions for a better tax system. To achieve such a system, which must be understandable, equitable, and at the same time revenue producing, is a large order; but we cannot deny that changes must be made. We must not allow our tax system to shackle us with unnecessary chains. Strides forward have been achieved; they must continue.

*Arthur M. Diamond.*

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STATUTORY ABROGATION OF THE RULE IN SHELLY'S CASE. Elmer J. Lessman, *Illinois Law Review of Northwestern University*. May-June, 1944.—The Rule in Shelly's Case took its name from a celebrated case in Lord Coke's time, although the rule itself antedated that case, and its origin and the reasons for its adoption have been lost in obscurity. But various reasons have been given for the existence of the Rule. One was that the rule having been established in feudal times, when the law frowned upon gaps in the vesting of title to real property, was established to prevent the inheritance, although it was not grounded upon any narrow feudal principle, being applied rather with the purpose of facilitating the owner of land by charging it with the debt of the ancestor. Another reason was that its establishment was in recognition of the rule that one who conveyed away an interest in fee could not restrict the disposition of that fee.

The author condemns the rule because it flies in the face of the intention of the grantor or testator as the case may be, and that the reasons for its establishment have no basis at the present time. The author points out that whatever was the reason for it, its effect is the same as if the estate be given to the individual absolutely in the first instance so that in a provision of a will, X to A for life and after her

death one half to A's heirs or to her devisees in case she leaves a will, the devise lapses wholly where A predeceases the testator. In Illinois the Rule applies to both deeds and wills.

Mr. Lessman mentions the four considerations that must be observed in order for the Rule to apply: 1. There must be a freehold estate; 2, there must be a remainder to the heirs of the heirs of the body of the person taking the life estate; 3, the two estates, that for life and that in remainder must be in the same instrument; 4, two estates must be in the same quality, they must be both legal or both equitable.

In Illinois the applicability of the rule has been abolished as to estates in tail by the Sixth section of the Conveyance Act. The Rule does apply however, to a trust where the particular estate and the remainder are both equitable; it is held not to apply where the remainder interest arises out of what is called an executory trust, as where the trustee must make the conveyance or settlement before the remainder can arise.

The Rule does not apply to personalty, though it has been referred to in cases by way of analogy, but in such cases it yields to the express intention of the testator. The author further points out how the rule has been applied in specific cases in Illinois and in conclusion he dwells upon its harshness. All this has led the Committee of the Illinois State Bar Association to respond favorably to the suggestion of the American Law Institute that the Rule be discontinued as a rule of property.

*William J. O'Connell.*

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THE PROSECUTION OF CONSCIENTIOUS OBJECTORS UNDER THE SELECTIVE SERVICE ACT. Nathan T. Eliff, *The Federal Bar Journal*, October, 1944.—From October 16, 1940, the date of the first registration, to June 30, 1944 there were but 10,872 convictions under Selective Training and Service Act of 1940. With no other method of enforcement available but the criminal provisions of the Act, the small number of convictions demonstrates the almost complete acceptance of the Act on the part of the general public and those persons directly affected by its provisions.

In 4,363 of these cases the defendants professed some type of religious or conscientious objection to complying with their obligations under the Act. Also it will be seen that in 3,079 of these 4,363 cases, the defendants were Jehovah's Witnesses who generally refused to accept the conscientious objector exemptions of the Act. Of the remaining 1,284 cases, less than half involved defendants who had unsuccessfully sought exemption from military service as conscientious objectors.