having been held by the Court of Queen's Bench in a late case of *Bradley* v. *Cartwright*, L. R. 2 C. P. 511, that words of distribution may by implication control the words "issue" so as to limit the ancestor's estate to a life interest.* And whatever be the words employed, even if the phrase be "heirs," a downright explanation by the testator that he meant sons or daughters will prevent the Rule from operating. If the testator has not been his own conveyancer, but has created an executory trust to settle lands on limitations sounding like that in the Rule, the Courts, in directing the settlement, incline to give effect to any indication of an intention that the first taker should not take more than a life interest.

The Rule itself has very often been stigmatised as a pitfall for testators, frustrating their intentions by giving the absolute disposal to persons intended only to enjoy for life, and thus enabling such persons to deprive the ultimate beneficiaries of their share in the testator's bounty. The testator may have meant that A. should only enjoy for his life, and that the reversion should be a provision for his children or some one else. If, however, the gift comes within the Rule in *Shelley's case*, A gets the fee simple or becomes tenant in tail, as the case may be, and can at once sell every atom, and so destroy all the hopes of all who were to come after him. We have lately received a pamphlet written by Mr. W. Wiley, one of the Registrars of the Principal Registry of the Irish Probate Court, in which a very earnest appeal is made for the Legislature to abolish the rule. In the words of Cockburn, C. J., in *Jordan* v. *Adams* (9 C. B. N. S. 497), Mr. Wiley urges that "it despotically fixes on the testator a purpose which he never entertains, and enforces a construction by which it is as clear as the sun at noonday that his intention is violated."

He then classifies as follows the instances in which the Rule defeats intention by converting the life interest which the testator meant to give, into an estate tail:—

"1. Cases where after a life estate given to the parent or ancestor, followed by a devise to the 'heirs of the body,' words of limitation are added to the words 'heirs of the body,' which would be totally unnecessary if it was intended that the parent or ancestor should get an estate tail.

2. Cases where after the words 'heirs of the body' words of distribution are added, totally inconsistent with the devolution of an estate tail.

3. Cases where, after an estate for life is given to the parent, there is a devise to his 'issue,' and words of limitation are added, which would be wholly unnecessary if an estate tail was intended.

4. Cases where words of distribution are added to the word 'issue,' totally inconsistent with the devolution of an estate tail.

5. Cases where the words 'child,' 'son,' and 'daughter' have been held to be words of limitation conferring an estate tail."

We agree with Mr. Wiley that the Rule in *Shelley's case* is a grievance; but he has rather overstated its amount. The rule is not necessarily bad because it defeats the intention of testators. No rules oftener defeat testator's intentions than the rule against perpetuity and the law which permits a tenant in tail to bar the entail and sell the land. Probably a majority of testators would like, if they could do so, to tie up their property longer than the law allows them: some of them try to do so, and fail, at the expense of intestacy; but it would not be well on that account to abolish or even remodel the rule against perpetuity. Undoubtedly the Rule in *Shelley's case* must frequently disappoint the intention when the will has been drawn by the testator himself or some other layman. Precisely the same again may be said of the rule against perpetuity, and that objection amounts to this, that as long as there are rules of law they will bruise those who do not know them oftener than those who do. When our real property law is simplified, as we hope to see it one day simplified, to the utmost possible degree, there will still remain some things which to inexperts will be technicalities. And for this simple reason, that the ownership of land must ever be a matter of title rather than of possession. It may sound illiberal, but we do not think "unlearned testators" who draw their own wills are entitled to very much pity. It is common, whenever a doubt arises about the effect of a will, to place it to the account of the "glorious uncertainty of the law." In many cases the doubt arises simply from the testator's want of forethought, or his imperfect style of putting his wishes on paper. Events—births, deaths, or what not—may occur which never occurred to the testator at all. Or he may use words with a certain meaning in his own mind, without reflecting that the next person who saw them might read them in a totally different sense.* In the first case he really has expressed no intention respecting the devolution in the events which have taken place; in the second, it is hard to say what is meant; but in either case the Court endeavours, if possible, to get at his mind. And however the law may be simplified, an expert acting on instructions will always make a better will than a testator could do for himself, just as an architect will design him a better house.

After all is said, there remains this,—the Rule is technical, there is no longer any reason

* The Wills Act, by restricting the meaning of the words "die without issue," though leaving them to the old law where they follow an estate tail, somewhat narrowed the operation of the Rule.

* We remember a devise to A. (a relation of testator's), and after him to "the heirs female," in which it was utterly impossible to determine whether the testator meant A.'s heirs or his own.