be effectuated in any manner by action of the state, as by enforcement of trespass laws or judicial enforcement of discrimination in wills? Or did it rather forbid the action of the state in interfering with the willingness of two private parties to deal with each other? Disposition of several early cases possibly governed by *Shelley* left this issue unanswered.[1297] But the Court has experienced no difficulty in finding that state court enforcement of common-law rules in a way that has an impact upon speech and press rights is state action and triggers the application of constitutional rules.[1298]

It may be that the substantive rule that is being enforced is the dispositive issue, rather than the mere existence of state action. Thus, in *Evans v. Abney*,[1299] a state court, asked to enforce a discriminatory stipulation in a will that property devised to a city for use as a public park should never be used by African-Americans, ruled that the city could not operate the park in a segregated fashion. Instead of striking the segregation requirement from the will, however, the court instead ordered return of the property to the decedent's heirs, inasmuch as the trust had failed. The Supreme Court held the decision permissible, inasmuch as the state court had merely carried out the testator's intent with no racial motivation itself, and distinguished *Shelley* on the basis that African-Americans were not discriminated against by the reversion, because everyone was deprived of use of the park.[1300]

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ment of restrictive covenants in the District of Columbia as violating civil rights legislation and public policy. Barrows v. Jackson, 346 U.S. 249 (1953), held that damage actions for violations of racially restrictive covenants would not be judicially entertained.

[1297] Rice v. Sioux City Memorial Park Cemetery, 245 Iowa 147, 60 N.W. 2d 110 (1953), *aff'd by an equally divided Court*, 348 U.S. 880 (1954), *rehearing granted, judgment vacated and certiorari dismissed*, 349 U.S. 70 (1955); Black v. Cutter Laboratories, 351 U.S. 292 (1956). The central issue in the "sit-in" cases, whether state enforcement of trespass laws at the behest of private parties acting on the basis of their own discriminatory motivations, was evaded by the Court, in finding some other form of state action and reversing all convictions. Individual Justices did elaborate, however. *Compare* Bell v. Maryland, 378 U.S. 226, 255–60 (1964) (opinion of Justice Douglas), *with* id. at 326 (Justices Black, Harlan, and White dissenting).

[1298] In New York Times Co. v. Sullivan, 376 U.S. 254 (1964), and progeny, defamation actions based on common-law rules were found to implicate First Amendment rights and Court imposed varying limitations on such rules. *See* id. at 265 (finding state action). Similarly, in NAACP v. Claiborne Hardware Co., 458 U.S. 886 (1982), a civil lawsuit between private parties, the application of state common-law rules to assess damages for actions in a boycott and picketing was found to constitute state action. Id. at 916 n.51.

[1299] 396 U.S. 435 (1970). The matter had previously been before the Court in Evans v. Newton, 382 U.S. 296 (1966).

[1300] 396 U.S. at 445. Note the use of the same rationale in another context in Palmer v. Thompson, 403 U.S. 217, 226 (1971). On a different result in the "Girard College" will case, *see* Pennsylvania v. Board of Trustees, 353 U.S. 230 (1957), discussed *infra*.