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Inheritance by a Murderer from His Victim

H. C. Force

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The second theory is very satisfactory in the case supposed,¹⁷ but if the figures had been tort claim \$3000, mortgage \$4000 and supply claim \$1000, then the second objection to the first theory would apply also to the latter; for while it is true that the mortgagee and supplyman have no just claim upon the fund in excess of the difference between the whole sum and the claim which is superior to each of their respective claims, yet the same is true of the tort claimant, as would appear if by chance we had begun our reasoning with him.

It is submitted that the true solution is that the tort claim being inferior to the supply claim alone is entitled to \$3000 in the case last supposed. By the same process of reasoning the mortgage is entitled to \$2000 and the supply claim to \$1000. Since all these may not be paid out of a \$5000 fund, it should be divided in the proportion of 3000 to 2000 to 1000. The tort claimant would then receive one-half, the mortgagee one-third, and the supplyman one-sixth of the total sum. If the authorities do not sustain this last method of distribution they are at least not so far committed to any other theory as to refuse it consideration.¹⁸

Orlo B. Kellogg.

INHERITANCE BY A MURDERER FROM HIS VICTIM—The question whether a murderer can inherit from his victim, except in the case of life insurance, is usually answered in the affirmative. The rule is well settled that if the beneficiary under a life insurance policy murders the insured, neither he nor his heirs or representatives can collect the policy.¹ But in cases where a devisee or heir has murdered his testator or ancestor, the courts are divided, the majority² holding that

¹⁷ That is, the result would be the same where the sums were as first stated, whether this method of computation or the one which the writer considers correct, is used.

¹⁸ Supp. U. S. Comp. Stat. '23, § 8146 $\frac{1}{4}$ ppp; Fed. Stat. Ann., 1920 Supp. 257, provides that nothing in the Ship Mortgage Act shall be construed to affect the "rank of preferred maritime liens among themselves." This note has been concerned with discussing the effect of the Act on the relative ranking of preferred maritime liens as compared with non-preferred liens, so the latter section has no application. Nevertheless it might add still further complication if, instead of being as we supposed, there had been two preferred liens, one of which was subordinated to the supply claim by its holder's laches, while the other was not.

¹ *N. Y. Mutual Life Ins. Co. v. Armstrong*, 117 U. S. 591, 29 L. ed. 997 (1886), *Cleaver v. Mutual Reserve Fund Life Assn.*, 1 Q. B. 147 (1892), *Johnston v. Metropolitan Life Ins. Co.*, 83 W. Va. 70, 100 S. E. 865, 7 A. L. R. 823 (1919). But see *Murchison v. Murchison*, 203 S. W. (Tex. Civ. App.) 423 (1918).

² *In re Kirby's Estate*, 162 Cal. 91, 121 Pac. 370, 39 L. R. A. (N. S.) 1088 (1912), *Hagen v. Cone*, 21 Ga. App. 416, 94 S. E. 602 (1917), *Wall v. Pfanschmidt*, 265 Ill. 180, 106 N. E. 785, L. R. A. 1915C, 328 (1914), *McAllister v. Fair*, 72 Kan. 533, 84 Pac. 112, 3 L. R. A. (N. S.) 726, 115 Am. St. Rep. 233, 7 Ann. Cas. 973 (1906), *Eversole v. Eversole*, 169 Ky. 793, 185 S. W. 487, L. R. A. 1916E, 593 (1916), *In re Gollnik's Estate*, 112 Minn. 349, 128 N. W. 292 (1910), *Shellenberger v. Ransom*, 41 Neb. 631, 59 N. W. 935, 25 L. R. A. 564 (1894), overruling *Shellenberger v. Ransom*, 31 Neb. 61, 47 N. W. 700, 10 L. R. A. 810, 28 Am. St. Rep. 500 (1891), *Owens v. Owens*, 100 N. C. 240, 6 S. E. 794 (1888), *Deem v. Milliken*, 53 Oh. St. 668, 44 N. E. 1134 (1895), affirming 6 Ohio C. C. 357, *Holloway v. McCormick*, 41 Okla. 1, 136 Pac. 1111, 50 L. R. A.

however undesirable it may be for a murderer to profit by his crime, nevertheless the statutes of wills or of descent are too clear, that the courts are powerless to read any exception into the statute, and that until the legislature acts there is no way of preventing the murderer from profiting by his crime.

Some of the courts³ confirming the murderer's title to his victim's property cite as authority the various constitutional provisions forbidding forfeitures and corruption of blood, without appearing to consider that what was sought in the cases before them was something entirely different from the evil at which the constitutional provisions were aimed. Where a man obtains property by fraud⁴ or theft,⁵ no court has ever considered it an unconstitutional forfeiture to compel him to make restitution. And the fact that he obtains it by murder would not seem to be any reason for treating his possession with greater consideration, or as being more particularly within the protection of the constitution.⁶

Three views as to the legal effect of the murder upon the title of the property of the deceased have been advanced. first, the legal title does not pass to the murderer as heir or devisee;⁷ second, the legal title passes to the murderer and he may retain it in spite of his crime⁸, third, the legal title passes to the murderer but because of the unconscionable method of obtaining it, he must hold it as constructive trustee for the other heirs or devisees of his victim. The first two views consider the legal effect only, and opinions setting them forth are usually written from the strict common law point of view even though the action may be on the chancery side of the court. The third view has been discussed chiefly in the law reviews,⁹ but has been recognized

(N. S.) 536 (1913) *In re Carpenter's Estate*, 170 Pa. 203, 32 Atl. 637, 29 L. R. A. 145, 50 Am. St. Rep. 765 (1895) *Hill v. Noland*, 149 S. W. (Tex. Civ. App.) 288 (1912). See also *Grandchamp v. Billis*, 124 La. 117, 49 So. 998 (1909) *Beddingfield v. Estill*, 118 Tenn. 393, 100 S. W. 108, 9 L. R. A. (N. S.) 640 (1907).
³ *In re Carpenter's Estate*, note 2, *supra*, *Wall v. Pfanschmidt*, note 2, *supra*.

⁴ *Hansen v. Hansen*, 110 Wash. 276, 188 Pac. 460 (1920) *Fox v. Hubbard*, 79 Mo. 390 (1883) *Luttrell v. Olmus* cited by Lord Eldon in 11 Ves. 638, 14 Ves. 290.

⁵ *Nebraska Nat. Bank v. Johnson*, 51 Neb. 546, 71 N. W. 294 (1897) *Grouch v. Hazlehurst Lumber Co.*, 16 So. (Miss.) 496 (1894).

⁶ *Hamblin v. Marchant*, 103 Kan. 508, 175 Pac. 678 (1918), 104 Kan. 689, 180 Pac. 811 (1919) *Box v. Lanier* 112 Tenn. 393, 79 S. W. 1042, 64 L. R. A. 458 (1904) *Perry v. Strawbridge*, 209 Mo. 621, 108 S. W. 641, 16 L. R. A. (N. S.) 244, 123 Am. St. Rep. 510, 14 Ann. Cas. 92 (1908).

⁷ *Riggs v. Palmer* 115 N. Y. 506, 22 N. E. 188, 3 L. R. A. 340, 12 Am. St. Rep. 849 (1889) *Box v. Lanier* note 6, *supra*, *Perry v. Strawbridge*, note 6, *supra*, *Lundy v. Lundy*, 24 Can. Sup. Ct. 650; *Hall v. Knight* (1914), P. 1, *In re Cash*, 30 New Zealand 577. See also *Slocum v. Metropolitan Life Ins. Co.*, 245 Mass. 265, 139 N. E. 816, 27 A. L. R. 1517 (1923).

⁸ See cases cited in note 2, *supra*.

⁹ 4 HARV. L. REV. 394, 8 HARV. L. REV. 170, 27 HARV. L. REV. 280, 30 HARV. L. REV. 622, 33 HARV. L. REV. 423; 24 AM. L. REV. 141, 30 AM. L. REV. 130, 36 AM. L. REV. N. S. 223 (reprinted in AMES' LECTURES ON LEGAL HISTORY, 310), 7 MICH. L. REV. 71, 160. See also note, 14 ANN. CAS. 99; 6 GREEN BAG 534.

as the correct theory in New York,¹⁰ has been discussed in Minnesota,¹¹ and has been rejected in Illinois.¹² This disposition of the decedent's property does not read any additional exception into the statute, but gives it, so far as the bare legal title is concerned, the effect which the courts holding the second point of view find imperative, and yet, by use of the equitable powers of the court, attains the result which they admit to be desirable but say can only be reached through the action of the legislature.

Several states have passed statutes¹³ to prevent a murderer's taking by inheritance or devise from his victim, but the traditional strict common law frame of mind of the courts which rendered the passage of these statutes necessary, and which is sometimes evidenced in their construction,¹⁴ shows that unless the statutes are most carefully drawn, equitable results will not always follow their passage. There would seem to be a better prospect of obtaining justice by the adoption of the flexible equitable remedy of a constructive trust, which can be adjusted to fit the particular circumstances of each case and to protect innocent purchasers, than by the legislative enactment of any hard and fast rule.

A recent case in Washington¹⁵ brought up a slightly different phase of the general question. The respondent filed a petition in his wife's

¹⁰ *Ellerson v. Westcott*, 148 N. Y. 149, 42 N. E. 540 (1896) *Van Alstyne v. Tuffy*, 103 Misc. Rep. 455, 169 N. Y. S. 173 (1918) *In re Santourian's Estate*, 125 Misc. Rep. 668, 212 N. Y. S. 116 (1925).

¹¹ *Wellner v. Eckstein*, 105 Minn. 444, 117 N. W. 830 (1908) (opinion by Elliott, J.), case decided on another point. But see *Gollnik's Estate*, note 2, *supra*.

¹² *Wall v. Pfanschmidt*, note 2, *supra*.

¹³ Kerr's California Civil Code (1920), § 1409; Burn's Indiana Statutes (1926), § 3376; Code of Iowa (1924) §§ 12032-4; Revised Statutes of Kansas (1923), § 22-133; Hemingway's Annotated Mississippi Code (1917), §§ 1392, 3380; Compiled Statutes of Nebraska (1922), § 1238; Compiled Statutes of Oklahoma (1921), § 11319; Shannon's Annotated Code of Tennessee (1917), § 4171a1, Virginia Code of 1924, § 5274; Wyoming Compiled Statutes (1920), § 7010. See also Merrick's Louisiana Civil Code (1925), §§ 1559, 1560, 1710.

¹⁴ *Harrison v. Moncravia*, 264 Fed. 776 (C. C. A. 8th, 1920), a conviction of murder in Kansas did not prevent the murderer's inheriting her victim's property in Oklahoma, though both Oklahoma and Kansas had similar statutes prohibiting a convicted murder from inheriting from his victim; *In re Kuhn's Estate*, 125 Iowa 449, 101 N. W. 151 (1904), as a widow takes her statutory share as matter of contract and right, a statute prohibiting a murderer from taking his victim's property by devise or descent did not affect a woman who murdered her husband, *In re Emerson's Estate*, 191 Iowa 906, 183 N. W. 327 (1921), statute does not affect remainderman who murders life tenant; *Beddingfield v. Estill*, 118 Tenn. 39, 100 S. W. 108, 9 L. R. A. (N. S.) 640 (1907), statute prohibiting murderer from taking by devise or descent from his victim does not apply to estate by entirety. *In re Kirby*, 162 Cal. 91, 121 Pac. 370, 39 L. R. A. (N. S.) 1088 (1912), statute prohibiting one convicted of murder from taking from his victim does not apply to one convicted of manslaughter. See also *Mertes' Estate*, 181 Ind. 478, 104 N. E. 753 (1914).

¹⁵ *In re Tyler's Estate*, 40 Wash. Dec. 518, 250 Pac. 456 (1926).

estate asking to have \$3000 of her separate estate, there being no community property, set aside to him in lieu of homestead under the statute.¹⁶ In her answer, the administratrix, joined by the heirs at law of the deceased, alleged as an affirmative defense, that he had murdered his wife, had been tried, convicted and sentenced to imprisonment for life in the penitentiary and was serving the sentence. The trial court sustained a demurrer to this affirmative defense, excluded all evidence in support of it, and set aside to the murderer the requested portion of his victim's estate. Upon appeal, the Supreme Court, by a five to four decision, held that the answer stated a good defense and reversed the judgment with instructions to overrule the demurrer and receive evidence in support of the answer.

The opinion of the Court discusses the matter at length, but from the same strictly common law point of view as that from which the question had been presented in both briefs, and holds that the decisions¹⁷ refusing to allow the murderer to profit by his crime, though fewer in number, are better in reason. The minority dissented upon the grounds given in the cases¹⁸ which the majority refused to follow. These cases relied on by the minority (and the others cited in note 2, *supra*) illustrate a strict adherence to the letter of the statute ignoring equitable principles and remedies, and say that a court of equity is no longer able to meet a new situation, but must wait for the legislature to correct an evil that in former times the chancellor would have easily corrected by the application of well known equitable remedies.

If the constructive trust theory, which is based upon the same fundamental principles as those upon which the Court relied, had been presented to the Court, it is possible that the Court would have adopted it and have united in a decision holding that the \$3000 should be set aside to the murderer under the statute, but requiring him to hold it as constructive trustee for his victim's heirs. This would have given to the statute the construction which the minority felt imperative, but would have corrected its admitted injustice by a well recognized equitable remedy. The final result would have been the same as that actually reached, but being on a sounder theory, the decision would have been less likely to meet the fate of the first decision in *Shellenberger v. Ransom*,¹⁹ and would have been a more persuasive precedent to guide to a just result those courts which have not yet had the question before them.

H. C. Force.

¹⁶ Rem. Comp. Stat. § 1473; P. C. § 9893 amended, Laws 1923, p. 457.

¹⁷ Citing the first four cases in note 7, *supra*.

¹⁸ Kansas, Nebraska, North Carolina, Ohio, Oklahoma and Pennsylvania cases cited in note 2, *supra*.

¹⁹ 31 Neb. 61, 47 N. W. 700, 10 L. R. A. 810, reversed in *Shellenberger v. Ransom*, 41 Neb. 631, 59 N. W. 935, 25 L. R. A. 564. AMES' LECTURES ON LEGAL HISTORY, 312 note 2, *supra*.