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Descent and Distribution -- Homicide -- Effect on Guilty Party's Right to Inherit

David M. Clinard

are usually said to apply,[52] and by relying on a similar case in which a court said that a minor's residence was where his domicile was, since domicile includes residence.[53]

The important thing to be remembered is that the North Carolina court will look to the nature of the subject matter, the purpose of the statute or other instrument, and the context in which the word is used in determining what "residence" means. An equally important corollary is that cases interpreting the word "residence" in one connection do not necessarily indicate the way in which that word will be interpreted when it arises in another connection.

F. KENT BURNS.

Descent and Distribution—Homicide—Effect on Guilty Party's Right to Inherit

A husband was acquitted of the unlawful homicide of his wife, whom he killed while shooting at a man he suspected of being her lover. In a subsequent suit by her son and her administrator for a declaratory judgment debarring him from inheriting from his wife, the husband's right to inherit was declared unchanged by the mere fact of the homicide.[1] A statute[2] which provided that no one convicted of "unlawfully killing" another should benefit from the death had no application, since the husband had been acquitted of any unlawful killing.

The theory of the court in allowing the husband to inherit was that the intent necessary to preclude a killer from benefiting by the death of his victim is more than a mere general criminal intent, or an intent directed at a third person. It must be an intent to kill unlawfully the person by whose death the killer seeks to benefit. The evidence showed that such intent had been absent in this case.

The problem of whether one who kills an ancestor, a testator, or a joint tenant, may acquire property from his victim, thus benefiting by virtue of his own homicidal act, has long been the subject of judicial and legislative discord.[3] A brief look at some of the decisions and statutes may aid in understanding the problems raised by the principal case.

In the absence of statutes directly in point the courts have, in general, fallen into one of three groups:

[52] Dykstra and Dykstra, *supra* note 46.

[53] Central Manufacturers Mutual Ins. Co. v. Friedman, 213 Ark. 9, 12, 209 S. W. 2d 102, 103, 1 A. L. R. 2d 557, 559, 560 (1948): "The domicile of Benno was with his father . . . Domicile includes residence. . . ."

[1] Legette v. Smith, 85 S. E. 2d 576 (S. C. 1955).

[2] S. C. CODE § 19-5 (1952).

[3] See generally, 16 AM. JUR., *Desecent and Distribution* §§ 74-78 (1938); Note, 39 A. L. R. 2d 477 (1955); 3 BOGERT, TRUSTS AND TRUSTEES § 477 (1946); Wade, *Acquisition of Property by Willfully Killing Another—A Statutory Solution*, 49 HARV. L. R. 715 (1936); AMES, LECTURES ON LEGAL HISTORY 310-312 (1913).

(1) Those courts which have allowed inheritance despite the fact that the property descends by virtue of the heir's felonious killing of the ancestor have done so on the theory that the statutes of wills and of descent and distribution are clear and unambiguous, and make no provision for such a situation, and that, until the legislature speaks again and deprives a killer of his right to inherit, the courts are powerless to prevent the property from going directly to the felon.[4] In support of this view the argument has been advanced that depriving an heir of his right to the property would be a forfeiture of estate upon conviction of a crime, in violation of express constitutional provisions.[5]

(2) Courts which have refused to allow the killer to benefit by his act insist that statutes of wills and descent were passed subject to the common-law doctrine that one may not profit by his own wrong, and that courts must read this principle into the statutes as being the intent of the legislature.[6] In answer to the contention that denying the right of inheritance to the killer is an unconstitutional forfeiture of his estate, these courts point out that the estate never vested in the killer; thus, that there is no *forfeiture,* but a mere *exclusion* of the killer from the group entitled to inherit.[7]

(3) Still a third group of courts has held that the statutes of descent and distribution control to the extent that the legal title passes to the killer immediately upon the death of his victim, but that, in keeping with principles of equity and good conscience, he becomes a constructive trustee, or holder of the bare legal title, for the benefit of those who

[4] Carpenter's Estate, 170 Pa. 203, 32 Atl. 637 (1895); Crumley v. Hall, 202 Ga. 588, 53 S. E. 2d 646 (1947); Deem v. Milliken, 6 Ohio C. C. 357 (1892), *aff'd,* 53 Ohio St. 668, 44 N. E. 1134 (1895); Eversole v. Eversole, 169 Ky. 793, 185 S. W. 487 (1916); Gollnik v. Mengel, 112 Minn. 349, 128 N. W. 292 (1910); Hagan v. Cone, 21 Ga. App. 416, 94 S. E. 602 (1917); Hill v. Noland, 149 S. W. 288, Tex. Civ. App. (1912); Holloway v. McCormick, 41 Okla. 1, 136 Pac. 1111 (1913); Owens v. Owens, 100 N. C. 240, 6 S. E. 794 (1888); McAllister v. Fair, 72 Kan. 533, 84 Pac. 112 (1906); *Re* Duncan's Estates, 40 Wash. 2d 850, 246 P. 2d 445 (1952); Shellenberger v. Ransom, 41 Neb. 631, 59 N. W. 935 (1894); Wall v. Pfanschmidt, 265 Ill. 180, 106 N. E. 785 (1914); Wilson v. Randolph, 50 Nev. 371, 261 Pac. 654, *rehearing denied,* 50 Nev. 440, 264 Pac. 697 (1927).

[5] Carpenter's Estate, 170 Pa. 203, 32 Atl. 637 (1895); Owens v. Owens, 100 N. C. 240, 6 S. E. 794 (1888); Wall v. Pfanschmidt, 265 Ill. 180, 106 N. E. 785 (1914).

[6] Garwols v. Bankers' Trust Co., 251 Mich. 420, 232 N. W. 239 (1930); *In re* Wilkin's Estate, 192 Wis. 111, 211 N. W. 652 (1927); McDonald v. Mutual Life Ins. Co., 178 Iowa 863, 160 N. W. 289 (1916) (insurance case); Perry v. Strawbridge, 209 Mo. 621, 108 S. W. 641 (1908); Price v. Hitaffer, 164 Md. 505, 165 Atl. 470 (1933); *Re* Spark's Estate, 172 Misc. 642, 15 N. Y. S. 2d 926 (Surr. Ct. 1939); *Re* Tyler's Estate, 140 Wash. 679, 250 Pac. 456 (1926) (apparently overruled by *Re* Duncan's Estates, *supra* note 4); Riggs v. Palmer, 115 N. Y. 506, 22 N. E. 188 (1889); Weaver v. Hollis, 247 Ala. 57, 22 So. 2d 525 (1945).

[7] Garwols v. Bankers' Trust Co., 251 Mich. 420, 232 N. W. 239 (1930); Perry v. Strawbridge, 209 Mo. 621, 108 S. W. 641 (1908); Weaver v. Hollis, 247 Ala. 57, 22 So. 2d 525 (1945).

would have taken had he not been living.[8] The North Carolina court has unqualifiedly allied itself with this view.[9]

The decision in the principal case points up the tendency of courts in jurisdictions which, by virtue of judicial construction or statutory directive, have denied some killers the right to inherit, to inquire into the "intent" of the killer in determining whether or not he shall be allowed to benefit by the death of his victim. In the principal case the South Carolina court refused to apply the criminal law theory that "malice follows the bullet," saying: "But to invoke this fiction of the criminal law against the right of inheritance in a civil case is, it seems to us, extending the common law principle to encompass a factual situation that was never intended to be within its purview."[10] The husband directed no malice toward his wife; thus, he did not forfeit his rights as an heir.

That courts consider the killer's intent in determining his right to inherit is made apparent in many ways. Clearly, no court would deny inheritance to one who kills an ancestor negligently—who kills in the commission of a mere tortious wrong,[11] while, at the other extreme, a court which denies the right to inherit to any killer would naturally deny it to one convicted of murder in the first degree. It has been said that if the killing was justified, as by self-defense, it would not preclude inheritance by the killer.[12] Killers who were insane at the time they committed the homicide have been held capable of inheriting.[13] The theory here seems to be that unless the killer has a *mens rea,* the common law or statutory doctrine which precludes him from inheriting is not justifiable.[14] One court refused to deny a husband the right to inherit from his wife, whom he killed while shooting at her alleged paramour, on the theory that he did not kill with the *intent* to inherit from his wife.[15]

As a consequence of the refusal of courts in group (1) to "read into"

[8] Neiman v. Hurff, 11 N. J. 55, 93 A. 2d 345 (1952) (joint ownership of stock); Whitney v. Lott, 134 N. J. Eq. 596, 36 A. 2d 888 (Ch. 1944); Sherman v. Weber, 113 N. J. Eq. 45, 167 Atl. 517 (Ch. 1933); Ellerson v. Wescott, 148 N. Y. 149, 42 N. E. 540 (1896); Van Alstyne v. Tuffy, 103 Misc. 455, 169 N. Y. S. 173 (Sup. Ct. 1918).

[9] Garner v. Phillips, 229 N. C. 160, 47 S. E. 2d 845 (1948); Bryant v. Bryant, 193 N. C. 372, 137 S. E. 188 (1927). See also, advocating this view, RESTATEMENT, RESTITUTION § 187 (1937).

[10] Legette v. Smith, 85 S. E. 2d 576, 580 (S. C. 1955).

[11] *In re* Houghton, [1915] 2 Ch. 173, 176, where the court said: "Hitherto it has never been suggested that there is any such incapacity or disqualification, where the person guilty of the act of slaying the deceased was innocent of any crime, as where the deceased was killed accidently or by misadventure, or his death was held to be a case of justifiable homicide."

[12] Floyd v. Franklin, 251 Ala. 15, 36 So. 2d 234 (1948).

[13] *In re* Houghton, *supra* note 11; Eisenhardt v. Siegel, 343 Mo. 22, 119 S. W. 2d 810 (1938); Petrillo v. Hanley, 29 Pa. D. & C. 512 (1936); *In re* Hoffman's Estate, 39 Pa. D. & C. 208 (1940); *In re* Estate of Mason, 31 D. L. R. 305 (1916).

[14] *In re* Pitts [1931] 1 Ch. 546.

[15] *In re* Wolf, 88 Misc. 433, 150 N. Y. S. 738 (Surr. Ct. 1914).

the statutes of descent and distribution any preclusion of murderers from inheriting, statutes have been passed in many jurisdictions in an effort to remedy this situation.[16] These statutes, however, are far from uniform. Almost as many different statutes have been enacted as there are ways of describing the act which will bring about disinheritance of the killer. Indirectly, they all have reference to the intent or state of mind of the killer. Some hold that only a "murder" is sufficiently reprehensible to deprive the killer of his inheritance.[17] Others refer to "murder in the first or second degree."[18] Still others apply only when there has been a "felonious"[19] or "willful"[20] causing of death, or an "unlawful"[21] or "criminal causing or procuring of death."[22] Several statutes extend the doctrine beyond the actual act of killing, and disinherit one who "conspires"[23] to kill, or "aids and abets"[24] the killing. One statute comes into play only where the killing has been done with the intent to obtain the property of the person killed.[25] Whether or not one who commits manslaughter is prevented from inheriting the property of the deceased depends entirely on the wording of the individual statute.[26]

The North Carolina statute on this point is even more limited than most, applying only to husband-wife homicides.[27] The North Carolina court avoided the inequitable consequences of a strict construction of the statute of descent in *Bryant v. Bryant*[28] and *Garner v. Phillips*[29] by

[16] See 3 BOGERT, TRUSTS AND TRUSTEES § 478 (1946), where these statutes are catalogued.

[17] CAL. PROB. CODE § 258 (1949).

[18] COLO. REV. STAT. ANN. §152-2-13 (1953); PA. STAT. ANN., tit. 20 §§ 136, 244 (1950).

[19] N. D. REV. CODE § 56-0423 (1943).

[20] MISS. CODE ANN. § 672 (1942).

[21] S. C. CODE § 19-5 (1952).

[22] OKLA. STAT. tit. 84, § 231 (1951).

[23] NEB. REV. STAT. §§ 30-119 and 30-120 (1943); KAN. GEN. STAT. § 59-513 (1949).

[24] IND. ANN. STAT. § 6-212 (1953).

[25] VA. CODE § 64-18 (1950). This statute was strictly construed in Ward v. Ward, 174 Va. 331, 6 S. E. 2d 664 (1940) and Blanks v. Jiggetts, 192 Va. 337, 64 S. E. 2d 809 (1951).

[26] Thus, in Strickland v. Wysowatcky, 250 P. 2d 199 (Colo., 1952), the court held that one who was convicted of voluntary manslaughter of his wife was not precluded from inheriting from her by a statute (COLO. REV. STAT. ANN. § 152-2-13 (1953)) which provided that "any person convicted of murder in the first or second degree . . . shall not take . . . any of the estate of deceased." In Hamblin v. Marchant, 103 Kan. 508, 175 Jac. 678 (1918), where the statute denied the right of inheritance in the decedent's estate to anyone convicted of "killing" decedent, it was held that a wife who was convicted of manslaughter in the third degree was precluded from inheritance.

[27] N. C. GEN. STAT. §§ 28-10, 30-4, 52-19 (1953). Since the North Carolina statutes deny the right of one spouse to succeed to the property of the other whom he has "feloniously slain," and since manslaughter, both voluntary and involuntary, is a felony in North Carolina (see State v. Dunn, 208 N. C. 333, 180 S. E. 708 (1935)), it seems that, under the statute, even manslaughter would preclude one spouse's inheriting from the other.

[28] 193 N. C. 372, 137 S. E. 188 (1927). Husband and wife were tenants by the entirety. Husband killed wife and the court denied him the benefits of the land on

the device of the constructive trust. But, necessarily, the law in this area is still in a nebulous state, since these decisions have set out the law in only two of a myriad of possible fact situations. Inevitably these situations will arise, and even granting that the court will feel justified in applying a constructive trust in every case, a comprehensive statute would seem vastly preferable. The result would be a much more predictable law in this area, relieving the necessity for litigation and for employing such a legal fiction each time an even slightly different set of facts arises.

DAVID M. CLINARD.

Trade Regulation—Exclusive Dealing Arrangements—Effect on Competition Required by Section 3 of the Clayton Act

Congress enacted Section 3 of the Clayton Act[1] in 1914. The intent of Congress was to apply a narrower standard of legality to exclusive dealing arrangements than was employed by the Sherman Act rule of reason approach.[2] The Act[3] was designed to eliminate unreasonably restrictive practices in their incipiency.[4]

Section 3 covers both tying clauses and exclusive dealing contracts.[5]

"equitable principles," expressly reserving the question of whether or not N. C. GEN. STAT. § 28-10 (1953) applied.

[20] 229 N. C. 160, 47 S. E. 2d 845 (1948). Son killed both parents. This case was clearly not within N. C. GEN. STAT. §§ 28-10, 30-4, or 52-19 (1953).

[1] 38 STAT. 731 (1914), 15 U. S. C. § 14 (1946).

[2] In Chicago Board of Trade v. United States, 246 U. S. 231, 238 (1918), Justice Brandeis stated the rule of reason as follows: "The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition. To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts."

[3] 38 STAT. 731 (1914), 15 U. S. C. § 14 (1946). Section 3 of the Clayton Act provides that: "It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods . . . whether patented or unpatented, for use, consumption, or resale . . . on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods . . . of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce."

[4] Standard Fashion Co. v. Magrane-Houston Co., 258 U. S. 346, 356 (1922): "The Clayton Act sought to reach the agreements embraced within its sphere in their incipiency, and in the section under consideration to determine their legality by specific tests of its own which declared illegal contracts of sale made upon the agreement or understanding that the purchaser shall not deal in the goods of a competitor or competitors of the seller, which may 'substantially lessen competition or tend to create a monopoly.'"

[5] North Carolina has a statute declaring such practices illegal per se, since there is no qualifying clause therein. N. C. GEN. STAT. § 75-5(b) (Supp. 1953). See also Note, 29 N. C. L. REV. 316 (1951).