

1970

Slayer's Act - Joint Tenancy - Partition by Creditor

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Recommended Citation

Henry S. Perkin, *Slayer's Act - Joint Tenancy - Partition by Creditor*, 9 Duq. L. Rev. 297 (1970).

Available at: <https://dsc.duq.edu/dlr/vol9/iss2/11>

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SLAYER'S ACT—JOINT TENANCY—PARTITION BY CREDITOR—THE Supreme Court of Pennsylvania has held that an execution sale of a slayer's jointly held property constitutes a severance of the joint tenancy and the buyer at such sale takes a fee interest in the property purchased free from the right of survivorship which had previously existed in the decedent's estate.

Larendon Estate, 439 Pa. 535, 266 A.2d 763 (1970).

Robert B. Dalton and John R. Larendon, the decedent, purchased and took title to certain tracts of land in Chester County, Pennsylvania as joint tenants with the right of survivorship. On December 7, 1960, Larendon was murdered by Dalton; a conviction followed. After Larendon's death, but prior to conviction, a judgment was entered against Dalton, the accused murderer. This judgment was executed and the appellant, Isadore Dresner, purchased at a sheriff's sale Dalton's interest in the property.¹ The administrator of Larendon's estate would not allow Dresner to take possession of the property. Therefore, Dresner sought a declaratory judgment "as to the nature and extent of the interest in the property which Dalton had had and he (Dresner) had purchased."² The lower court³ held that due to the provisions of the Slayer's Act⁴ of Pennsylvania Dalton's interest was only a life estate. Dresner by purchasing this interest acquired a life estate *pur autre vie* measured by the life of Dalton. Upon appeal the Supreme Court of Pennsylvania reversed the lower court decision.⁵

1. A sale upon an execution of a judgment lien on a joint tenant's interest in joint property is sufficient to operate as a severance of the joint tenancy. *Re Erie Trust Co.*, 19 *Erie Co. L. J.* 469 (1938), 161 *A.L.R.* 1139, 1140 (1946). It has been uniformly held in all jurisdictions that a "mere judgment lien against the interest of a joint tenant in joint property is not, of itself, sufficient to operate as a severance of the joint tenancy." *Id.* at 1139.

2. 439 Pa. 535, 266 A.2d 763 (1970).

3. *Larendon Estate*, 16 *Ches. Co. Rep.* 181 (1968), *rev'd*, 439 Pa. 535, 266 A.2d 763 (1970).

4. PA. STAT. ANN. tit. 20, §§ 3446(a), 3448 (1941). Section 3446(a) provides:

One-half of any property held by the slayer and the decedent as joint tenants, joint owners or joint obligees shall pass upon the death of the decedent to his estate, and the other half shall pass to his estate upon the death of the slayer, unless the slayer obtains a separation or severance of the property or decree granting partition. (Emphasis Added).

Section 3448 provides:

Any interest in property, whether vested or not, held by the slayer, subject to be divested, diminished in any way or extinguished, if the decedent survives him or lives to a certain age, shall be held by the slayer during his lifetime or until the decedent would have reached such age, but shall then pass as if the decedent had died immediately thereafter.

5. 439 Pa. 535, 266 A.2d 763 (1970).

Mr. Justice Pomeroy,⁶ speaking for the majority, reasoned that the Slayer's Act⁷ did not extinguish the slayer's right to partition his interest in the property. Therefore, the sale upon execution of the judgment lien against Dalton was sufficient to effect a partition of the joint tenancy.⁸ Dalton and Larendon became tenants in common. As a tenant in common, Dalton had an undivided fee interest in one half of the property.⁹ It was this interest that the court said Dresner had obtained. The court stated:

[T]here is no indication, express or implied, that the Act is meant to extinguish any property right enjoyed by the slayer at the time of his misdeed nor should it be construed to have the effect unless necessary.¹⁰

To fully understand the impact of this decision it is necessary to examine the evolution of the Slayer's Act.¹¹

In the absence of a statute four approaches are taken by the courts in dealing with a slayer's rights in joint tenancies. The first view allows the entire right of survivorship benefits on the ground that each tenant is deemed to be seized of the whole for the purposes of survivorship from the time of the original conveyance.¹²

The second view denies the right of survivorship to the slayer. The basis for this approach is the equitable maxim which states that one should not be allowed to benefit through his own wrongdoing. In these jurisdictions there is a presumption that the victim would have survived but for his wrongful act.¹³

The third view deals with the concept of the constructive trust. Under this approach the slayer receives title to the decedent's interest by operation of his right of survivorship. However, a constructive trust is imposed, and the slayer is made a constructive trustee of the property and holds it for the estate of the decedent.¹⁴

The fourth view treats the act of the slayer as an act of severance.

6. Dissenting opinions were filed by Mr. Justice Cohen and Mr. Chief Justice Bell.

7. See note 4.

8. See note 1.

9. 382 Pa. 411, 115 A.2d 197 (1955).

10. 493 Pa. 535, 266 A.2d 763, 765 (1970).

11. See note 4.

12. *Smith v. Greenburg*, 121 Colo. 417, 218 P.2d 514 (1950); *Oleff v. Hodapp*, 129 Ohio 432, 195 N.E. 838 (1935); *Wenker v. Landon*, 161 Ore. 265, 88 P.2d 971 (1939); *Beddingfield v. Estill and Newman*, 118 Tenn. 39, 100 S.W. 108 (1906).

13. *Merrity v. Prudential Ins. Co.*, 110 N.J.L. 414, 166 A. 335 (1935); *Bierbraur v. Moran*, 244 App. Div. 87, 279 N.Y.S. 176 (1935); *In Re Santourian's Estate*, 125 Misc. 688, 212 N.Y.S. 116 (1925); *In Re King's Estate*, 261 Wis. 266, 52 N.W.2d 885 (1952).

14. RESTATEMENT OF RESTITUTION § 188 (1937); 4 SCOTT, TRUSTS § 493.2 (3rd ed. 1967).

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This causes the joint tenancy to become a tenancy in common. The slayer gets one half of the property while the decedent's estate gets the other half.¹⁵

Prior to statutory provisions dealing with a slayer's rights in jointly owned property, the Supreme Court of Pennsylvania followed the first view as discussed above. In *Carpenter's Estate*,¹⁶ a father was murdered by his son, in order that the son might get immediate possession of the decedent's estate under the statute of distributions. The court would not take the inheritance from the murderer. The rationale of the court follows:

The intestate law in the plainest words designates the persons who shall succeed to the estates of the deceased intestates. It is impossible for the courts to designate any different persons to take such estates without violating the law.¹⁷

In dealing with the effect of the equitable principle that one should not be permitted to benefit through his own wrongdoing, the court stated that to deny the son his interest in the inheritance would be a punishment for his wrongful act. To effectuate such an end they said "the law must fix punishments; the courts cannot impose them."¹⁸ From *Carpenter* it was obvious that a statute concerning a slayer's interest was needed in the Commonwealth of Pennsylvania.

Statutory provisions dealing with this matter were first introduced in Pennsylvania through the Wills and Intestate Acts of 1917.¹⁹ These two statutes remedied the situation of *Carpenter*.²⁰ However, there was a flaw in their construction which would cause problems at a later date.²¹ This was due to the fact that the Wills and Intestate Acts of 1917 spe-

15. *Ashwood v. Patterson*, 49 So. 2d 848 (Fla. 1951); *Bradley v. Fox*, 7 Ill.2d 106, 129 NE.2d 699 (1955); *Grose v. Holland*, 357 Mo. 874, 211 S.W.2d 464 (1948).

16. 170 Pa. 203, 32 A. 637 (1895).

17. *Id.* at 203, 32 A. at 637.

18. *Id.* at 203, 32 A. at 637.

19. PA. STAT. ANN., tit. 20, § 244 (1917) provides:

No person who shall be finally adjudged guilty, either as principle or accessory, of murder of the first or second degree, shall be entitled to take any part of the real or personal estate of the person killed, as devisee or legatee, or otherwise, under the will of such person.

Id. section 136 provides:

No person who shall be finally adjudged guilty, either as principle or accessory, of murder of the first or second degree, shall be entitled to inherit or take part of the real or personal estate of the person killed, as surviving spouse, heir, or next of kin to such person under the provisions of this act.

20. 170 Pa. 203, 32 A. 637 (1895). According to the Wills and Interstate Acts of 1917 the son would not take under his inheritance from his father since he was "finally adjudged guilty . . . of [the] murder" of his father.

21. See *Tarlo's Estate*, 315 Pa. 321, 172 A. 139 (1934).

cifically stated that the slayer must be "finally adjudged guilty . . . of murder." In *Tarlo's Estate*²² a father killed his wife and daughter and then committed suicide. Here the Supreme Court of Pennsylvania ruled that because the father committed suicide, he was never "finally adjudged guilty . . . of murder." Therefore, the provisions of the Intestate Act of 1917 did not apply to the *Tarlo* situation. In its opinion, the court once again put the burden upon the legislature. The court said:

If the law is to be changed so as to cover the situation before us, it is for the legislature to make the change, not for us.²³

Because of decisions such as *Tarlo* a model statute²⁴ was drafted for the purpose of denying a slayer an interest in property which he could receive through his misdeed. This model statute was substantially adopted by the Pennsylvania Legislature in 1941 in the form of the Slayer's Act.²⁵ This is the statute which governed the decision in *Larendon*.

Through viewing the history of the Slayer's Act in Pennsylvania it seems that a question arises as to the validity of the decision in *Larendon*. Should a partition or severance of a slayer's interest in a joint tenancy be permitted after he commits a felonious homicide? The court said that the severance should be permitted. However, this seems to be inconsistent with the purpose of the act. Mr. Justice Pomeroy states that the act is not meant to extinguish any property right enjoyed by the slayer at the time of his crime "*unless necessary*."²⁶ (Emphasis added.) It is submitted that under the facts of *Larendon* it is necessary to deny the slayer his right of partition or severance. The statute was enacted in order to deny a slayer from benefiting from his wrongful act.²⁷ The legislative intent as construed by the court was set forth in *Kravitz Estate*.²⁸

22. 315 Pa. 321, 172 A. 139 (1934).

23. *Id.* at 326, 172 A. at 141.

24. Wade, *Acquisition of Property By Wilfully Killing Another—A Statutory Solution*, 49 HARV. L. REV. 715 (1936). According to Wade, the purpose of this model statute was to give effect to the equitable maxim: "that no one should be allowed to profit by his own wrong." The article points out that some jurisdictions will not apply the maxim because it would be contrary to an existing statute. Since courts are quite wary about "legislating," the maxim is disregarded. This is basically the problem which prevailed in Pennsylvania prior to the Wills and Interstate Acts of 1917. See *Carpenter's Estate*, 170 Pa. 203, 32 A. 637 (1895).

25. PA. STAT. ANN. tit. 20, §§ 3441-3456 (1941).

26. 439 Pa. 535, 266 A.2d 763, 765 (1970).

27. See *Carpenter's Estate*, 170 Pa. 203, 32 A. 637 (1895); *Tarlo's Estate*, 315 Pa. 321, 172 A. 139 (1934).

28. 418 Pa. 316, 327, 211 A.2d 443, 447 (1965).

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The intent of the legislature and language of the Slayer's Act are, we believe, clear—a person convicted of murder is not entitled to receive any property of the person he (or she) wilfully or unlawfully killed.

There are also overlapping slayer's provisions in the Wills Act and in the Intestate Act of 1947.²⁹ These statutes specifically state that the slayer should not receive *benefits* of the property due to his unlawful killing. By allowing Dalton to have the joint tenancy severed, a definite benefit was conferred upon him. He could now convey a one-half fee interest in the property which he formerly held as a joint tenant. It is submitted that this is a definite economic benefit to the slayer. The decision by the Pennsylvania Supreme Court in *Larendon* seems to be contrary to the evolution of the Slayer's Act, and the overlapping provisions of the Wills and Intestate Acts of 1947. It also seems to be contrary to the legislative purpose as stated by the Pennsylvania Supreme Court in *Kravitz Estate*. The reason for this is that according to section 3446 of the Slayer's Act, when Dalton killed Larendon he automatically lost his right of survivorship. The survivorship became vested in the estate of the decedent, Larendon. In short Dalton received a life interest in his portion of the property.³⁰ By allowing Dalton to partition his interest, he was then permitted to have a fee interest instead of merely a life estate.

The majority opinion in *Larendon* notes that the act provides that the slayer loses his right of survivorship, "unless the slayer obtains a separation or severance of the property or a decree granting partition."³¹ If this clause is construed to allow the slayer to have a severance after his

29. The Wills Act provides:

(5) Slaying. Any person who participates either as a principle or as an accessory before the fact in the wilful and unlawful killing of any person shall not in any way acquire property or receive any *benefits* as the result of the wilful and unlawful killing but such property or benefits shall be distributed as provided by law. (Emphasis Added). PA. STAT. ANN. tit. 20, § 180.7(5) (1947).

The provisions of the Intestate Act are substantially the same as that of the Wills Act. *Id.* § 1.6(c) (1947).

30. This result seems to be further supported by PA. STAT. ANN. tit. 20, § 3448. This section of the Slayer's Act provides:

Any, interest in property, whether vested or not, held by the slayer, subject to be divested, diminished in any way or extinguished, if the decedent survives him or lives to a certain age, shall be held by the slayer during his lifetime or until the decedent would have reached such age, but shall then pass as if the decedent had died immediately thereafter.

It will be noted that this section of the statute seems to bring about the same result as the theory of the constructive trust which has been followed in several jurisdictions which do not have a statutory slayer's provision. *Supra* note 14.

31. PA. STAT. ANN. tit. 20, § 3446(a) (1941).

criminal act (as the court did in *Larendon*), it will defeat the purpose of the act as discussed above.

An examination of the authority in jurisdictions other than Pennsylvania may help to illustrate why permitting a severance of a joint tenancy, as the court permitted in *Larendon*, is not the best solution to the problem. Concerning a joint tenancy, the Restatement of Restitution³² takes the position that even if a partition is compelled, the slayer is only entitled to a one-half interest for life. Under this view the slayer actually takes the entire interest in the property upon the death of the decedent. However, he is compelled to hold the interest upon a constructive trust for the estate of the deceased co-tenant. The only thing he is entitled to is one-half of the income for his life. The result here seems to be desirable since the slayer cannot benefit through the killing yet he is not being denied any interest he previously held in the property.

This same position has also been followed by the Supreme Court of Wisconsin. In *In Re King's Estate*³³ a husband and wife held property as joint tenants. The husband murdered the wife and then committed suicide. Counsel for the estate of the husband argued that the act of murder effected a severance of the joint tenancy. The court rejected this argument holding that the interest of the husband after murder was a life estate which ended when he committed suicide. The remainder of the interest vested in the estate of the wife. In support of this conclusion the court said, "enjoyment must be preserved, but it cannot be enlarged by his unlawful act."³⁴ It is generally conceded that if the slayer had obtained a partition or severance of the joint tenancy prior to his act he would be permitted to retain his entire one-half interest. This is because his interest would not have been enlarged by the murder.³⁵

32. RESTATEMENT OF RESTITUTION, Explanatory Notes § 188, Comment *b* at 774 (1938). Section 188 provides:

Where two persons have an interest in property and the interest of one of them is enlarged by the murder of the other, to the extent to which it is enlarged he holds it upon a constructive trust for the estate of the other.

Comment *b* provides:

Murder by Co-owner. If one tenant in common murders the other, no constructive trust will be imposed upon the murderer since his interest is not derived from or increased by the murder. The situation is different where there are two joint tenants and the principle of survivorship is applicable. In such a case if one of them murders the other, the murderer takes by survivorship the whole legal interest in the property, but he can be compelled to hold the entire interest upon a constructive trust for the estate of his co-tenant, except that he is entitled to one-half of the income for life. *It is immaterial that each of them might have compelled a partition before the death of either.* (Emphasis Added).

33. 261 Wis. 266, 52 N.W.2d 885 (1952).

34. *Id.* at —, 52 N.W.2d at 888 (1952).

35. 4 SCOTT, TRUST § 493.2 (3d ed. 1967).

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In addition to the maximum that one should not be permitted to benefit through his own wrongdoing, other rationales have been expressed which seem to imply that the result in *Larendon* may be erroneous. One author has put forth the opinion that all doubts should be resolved against the slayer since it was his unlawful act which raised problems for the courts.³⁶ If the Supreme Court of Pennsylvania had to interpret the effect of provision 3446 of the Pennsylvania Slayer's Act it probably should have construed it in a light unfavorable to the slayer. If this provision were interpreted against the slayer he would have only had a life interest. However, the decision of the court awarded him a fee interest. Perhaps Lord Justice Fry best expressed the reason why a slayer should not be permitted to sever a joint tenancy after his wrongful act. He said:

It appears to me that no system of jurisprudence can with reason include amongst the rights which it enforces rights directly resulting to the person asserting them from the crime of that person.³⁷

In reviewing the evolution of the law dealing with a slayer's interest in jointly held property it seems that the Supreme Court of Pennsylvania has allowed the slayer to benefit through his own wrong. If this was the only avenue open to the court this decision might have been easier to reconcile. However, through the views of several legal scholars, and the decisions in other jurisdictions, it is submitted that a more equitable result could have been reached.

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36. 31 N.Y.U. L. REV. 963 (1956). This is a case note dealing with *Bradly v. Fox*, 129 N.E.2d 699 (Ill. 1955). In this case the defendant and decedent were husband and wife. They held the property in dispute as joint tenants. The husband murdered his wife and then attempted to convey the entire property to his attorney in payment of his counsel on the murder charge. The Supreme Court of Illinois held that the act of the husband terminated his right of survivorship and caused a severance in the joint tenancy giving the husband an undivided one-half interest. This case note analyzes and criticizes the Illinois court's decision.

37. *Cleaver v. Mutual Reserve Fund Life Association*, 1 Q.B. 147, 156 (1892).