SELF-MADE HEIRSHIP THROUGH MURDER.*

Can one automatically effectuate his own inheritance by murder of an ancestor or testator?

Where the statute is silent upon this proposition, there is a sharp and irreconcilable conflict of judicial authority. The courts of different states are arrayed on opposite sides, dissenting opinions pro and con are numerous, and in one state an unanimous opinion one way was on rehearing replaced by an unanimous opinion the other way.

In America the laws of descent, distribution and wills are statutory. An analysis of the cases discloses that the ultimate difference of opinion which produces this conflict of decisions rests upon the willingness on the one hand or refusal on the other, of the particular court passing upon the question, to supply by implication an unexpressed exception to the operation of the statutory laws of descent, distribution or wills, in order that a seeming injustice may be avoided, or in other words to hold that the legislature could not have meant what it literally enacted as law.

All the authorities on both sides are collated in the recent Third Edition of Woerner on "The American Law of Administration" (1923), § 64*a*, p. 186 *et seq.*, together with the gist of the argument on each side.

I.

AUTHORITIES DENYING INHERITANCE.

The New York case of *Riggs v. Palmer*[1] is the first and leading one of that class which denies that one can benefit himself as the devisee or heir of one whose life he has taken to effectuate that purpose, though the statute makes no such exception. There a devisee killed the testator to prevent revocation of the will, for which he was convicted of

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1. 115 N. Y. 506 (1889).

murder. Arguing to justify its holding that he could take nothing under the will, the court (two judges dissenting) says (p. 509):

"It was the intention of the law makers that the donees in a will should have the property given them. But it never could have been their intention that a donee who murdered the testator to make the will operative should have any benefit under it. If such a case had been present to their minds, and it had been supposed necessary to make some provision of law to meet it, it cannot be doubted that they would have provided for it . . . . A thing which is within the letter of a statute is not within the statute, unless it be within the intention of the makers."

The court then argues that the statutes of descents and devises must be construed in the light of the principles or maxims of the common law, which should be read into the statute of descents and wills, so that in the absence of a specific enactment to the contrary the murderer cannot inherit, for, says the court, at common law (p. 511):

"No one shall be permitted to profit by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property by his own crime. These maxims are dictated by public policy, have their foundation in universal law administered in all civilized countries, and have nowhere been superseded by statutes . . . . He murdered the testator expressly to invest himself with an estate. Under such circumstances, what law, human or divine, will allow him to take the estate and enjoy the fruits of his crime? . . . . To answer these questions in the affirmative, it seems to me, would be a reproach to the jurisprudence of our state, and an offence against public policy."

That case is unqualifiedly approved and followed in Missouri in *Perry v. Strawbridge,* decided 1908.[2] There a hus-

2. 209 Mo. 261; 108 S. W. 641; 16 L. R. A. (N. S.) 244; 123 Am. St. 510; 14 Ann. Cas. 92.

band, under circumstances where the statute made him one of the wife's heirs, killed her "without lawful provocation or excuse" and a few hours later committed suicide. The court held that his heirs could not take through him, by reason of his act. Among other things the court says (p. 629):

"Can it be said that one, by high-handed murder, cannot only make himself an heir in fact, when he had but a mere expectancy before, but further shall enjoy the fruits of his own crime? To use this seems abhorrent to all reason, and reason is the better element of the law."

Although the Missouri statutory provisions of descent are general, purporting to cover all cases, the court holds that the common law inhibiting profit through crime makes an exception, and says (p. 635):

"Has the common law in this respect been repealed, changed or modified? We think not. If not, they (its maxims) are a part of our law. If not, then this statute must be read in connection therewith and when so read the father of appellees acquired no interest in the estate .... To our mind our Statute of Descents and Distribution is so largely expressive of the common law that we must consider these maxims and the whole body of the applicable common-law doctrines .... Our statutes of descents and distributions both affirm and modify the common law, but nowhere specifically mention that rule or doctrine of the common law which precluded the murderer from inheriting from his victim. This latter is not so inconsistent with the statute as to call upon us to say that such portion of the common law, previously existing, was repealed or changed .... The construction contended for is one which shocks both common right and common decency, and no court should be inclined to other than a construction which would make the statute comport with reason and the fundamental maxims of the law."

The court further holds that its ruling does not violate

the provision of the state constitution against attainder or corruption of blood or forfeiture of estate, on the ground that no interest had ever vested in the murderer, hence there was nothing upon which that provision could operate.

Intermediate between the above two cases is the Nebraska case of *Shallenberger v. Bansom.*[3] This case at first held the same doctrine as announced in New York and Missouri. It was an action for the partition of land conveyed by the father of a tenant in common whom he had murdered for the purpose of possessing himself of the property. The court in the first opinion held that a purchaser could not derive title from one who had murdered the ancestor from whom the property was derived. (But that ruling was later reversed on rehearing as below stated.)

Authorities that insurance cannot be collected by one who murders the insured, not being cases of inheritance or devise, will not be discussed here.

II.

AUTHORITIES ALLOWING INHERITANCE.

Along such lines reason the cases holding that the courts may read into the positive statutes of descents and wills exceptions not contained therein. It is quite true that these opinions give expression to what human sentiment persuades us ought to be the law. But if a statute is plain no resort to "construction" is permissible. The enactment of positive statutes is a legislative function, not to be revised or usurped by the judiciary, however harsh they may seem. The cases above referred to have therefore not carried with them the weight of judicial authority, which holds that the common law is superseded by our statutory laws directing the course of inheritance intestate or intestate estates and that courts cannot change them.

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3. 31 Neb. 61.

Thus, the earliest case of this tenor, *Owens v. Owens,*[4] holds that a widow, convicted as an accessory to her husband's murder, was not debarred of dower, and that crime could not intercept the inheritance of statutory heirs.

And it is significant that in the above cited case of *Shallenberger v. Ransom,* on rehearing, three and a half years later[5] (1894, 41 Neb. 632), the court squarely recedes from its former stand. In the final opinion the court says (p. 644):

"In our statute of descent there is neither ambiguity nor room for construction. The intention of the legislature is free from doubt. The question is not what the framers of our statute of descent would have done had it been in their minds that a case like this would arise, but what in fact they did, without perhaps anticipating the possibility of its existence. This is determined, not by hypothetical resort to conjecture as to their meaning, but by a construction of the language used. The majority opinion in *Riggs v. Palmer,* as well as the opinion already filed in this case, seem to have been prompted largely by the horror and repulsion with which it may justly be supposed the framers of our statute would have viewed the crime and its consequences. This is no justification to this court for assuming to supply legislation, the necessity for which has been suggested by subsequent events, but which did not occur to the minds of those legislators by whom our statute of descent was framed. Neither the limitations of the civil law nor the promptings of humanity can be read into a statute from which, without question, they are absent, no matter how desirable the result to be attained may be."

So in *Carpenter's Estate*[6] the court refused to amend the positive law by decreeing a forfeiture of the inheritance of a

4. 100 N. C. 240 (decided 1888).
5. 1894, 41 Neb. 632.
6. 170 Pa. St. 203 (1895); one judge dissenting.

convicted parricide, and also held that to do so would violate a constitutional provision against attainder of felony or forfeiture of estate. The court *i. a.* observes:

"When the imperative language of a statute prescribes that upon the death of a person his estate shall vest in his children in the absence of a will, how can any doctrine, or principle, or other thing called public policy, take away the estate of a child and give it to some other person? The intestate law casts the estate upon certain designated persons, and this is absolute and peremptory, and the estate cannot be diverted from those persons and given to other persons without violating the statute. There can be no public policy which contravenes the positive language of a statute."

A similar decision is made in *Deem v. Millikin,*[7] affirmed "on the reasoning" of the lower court. The court criticises the New York case, saying:

"The well-considered cases warrant the pertinent conclusion that when the legislature, not transcending the limits of its power, speaks in clear language upon a question of policy, it becomes the judicial tribunals to remain silent [citing cases] . . . . The decision in *Riggs v. Palmer* is a manifest assertion of a wisdom believed to be superior to that of the legislature upon a question of policy."

Recently authorities have come thick and fast, all of them along these lines. After commenting on the cases hereinabove mentioned, the author in the third edition of Woerner's "*American Law of Administration,*" sec. 64*a* (p. 188) continues: "Similar rulings were thereafter made in a number of other states, all holding that no exception can be engrafted by the courts upon the provisions of descent and distribution because of the crime of the beneficiary in causing the death of the ancestor," and authorities are cited

7. 6 Ohio Cir. Ct. 347; 53 Ohio St. 668 (1895).

from nine other states, all of them directly so holding.[8] So that the author is well supported in his conclusions: "There seems to be no escape on principle from the conclusion that at common law, and under the statutes and constitutions of the various states of the Union, courts are not warranted in disregarding the course of descent and distribution, or the conclusiveness of duly executed wills, to divert the succession from the murderers of ancestors or testators, and the authorities now strongly preponderate in this direction."

III.

SPECIFIC STATUTORY PROVISIONS.

The proposition under discussion is considered heretofore in the absence of specific provisions on this point in the statutes of descent, distribution and wills. But in a number of states the subject has received the attention of legislatures. In Judge Woerner's work, above cited, the statutes of a number of states, and the constructions given to them, are referred to.

Among these, it is provided in Mississippi, Iowa and Tennessee, that one wilfully causing or procuring the death of another, in any way, cannot inherit from such other, but the inheritance descends as intestate property, or as if the slayer had never existed. In Iowa this is held not to exclude one who makes herself a widow by her own deed, because, it is held, her distributive share in her victim's estate is not technically taken by way of inheritance *(Kuhn v. Kuhn, supra)*; so in Tennessee, for like reasons, such

8. Grollnik's Estate, 112 Minn. 349, 128 N. W. 292; Bruns v. Cope, 182 Ind. 289, 105 N. E. 471; Kuhn v. Kuhn, 125 Iowa 449, 101 N. W. 151; Emerson Estate (Iowa), 183 N. W. 327; Holloway v. McCormick (Okla.), 136 Pac. 1111; Harrison v. Moncravie, 264 Fed. 776; Wall v. Pfanschmidt, 265 Ill. 180, 106 N. E. 785, L. R. A. 1915C, 328; McAllister v. Fair, 72 Kans. 533, 84 Pac. 112; Eversole v. Eversole, 169 Ky. 793, 185 S. W. 487; Hagan v. Cone, Ga. App., 94 S. E. 602; Johnston v. Met. L. Ins. Co. (W. Va.), 100 S. E. 865.

statute is held not to apply to estates by the entirety, although the husband slays his wife *(Beddingfield v. Estill)*.[9]

Again, in Indiana, Kansas and Oklahoma the statute provides that no person *convicted* of killing another shall inherit from him. This statute is in Indiana held not to apply to the widow's statutory award, because she takes the same absolutely and not by descent, distribution or devise: *(Mertes' Estate)*[10]; nor does the mere aiding and abetting of the homicide, without *conviction*, bring the case within the statute *(Bruns v. Cope, supra)*. And in *Harrison v. Moncravie*[11] the U. S. Circuit Court of Appeals holds that the statutes only apply to conviction within the state, so that, though the statutes are similar in both Kansas and Oklahoma, yet a widow convicted in Kansas of killing her husband, may inherit real estate in Oklahoma, because the conviction was not in the latter state. So in California, a statute that one convicted of *murder* of the decedent cannot inherit, is held not to apply to a conviction for *manslaughter*: *(Kirby's Estate)*.[12]

It is to be noted that these constructions, refusing to apply such statutes to cases not strictly within their terms, are in line with those decisions which refuse to divert the course of descent where the statute is altogether silent upon the effect to be given to the crime of one who kills an ancestor or testator to possess himself of the estate of his victim.

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9. 118 Tenn. 39; 100 S. W. 108.
10. 181 Ind. 478; 104 N. W. 753.
11. 264 Fed. 776.
12. 162 Cal. 91; 121 Pac. 370; 39 L. R. A. (N. S.) 1088; Ann. Cas. 1913C. 928