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# DESCENT AND DISTRIBUTION - INHERITANCE AS AFFECTED BY HEIR'S MURDER OF DECEASED

DESCENT AND DISTRIBUTION — INHERITANCE AS AFFECTED BY HEIR'S MURDER OF DECEASED — Albert Tarlo shot and killed his wife while she slept, then killed his daughter, and next killed himself. He survived the wife and daughter by a few hours. The daughter left no will, and by the statute of distribution her property went to the father. A statute provided in effect that no one who should be "finally adjudged guilty" of murder should be allowed to take as heir or next of kin of the person killed. *Held*, that the father's estate might take the daughter's estate by inheritance. *In re Tarlo's Estate*, 315 Pa. 321, 172 Atl. 139 (1934).

It is generally agreed that public policy and natural justice demand that an heir who murders his ancestor should not inherit the property of the deceased.[1] A review of the cases, however, shows that while one class of cases holds that the murderer can take no title, and another holds that he takes the property but as a constructive trustee for the representatives of the one murdered, a large class of cases, unnecessarily and unfortunately, it seems, permits the murderer to take the property on the theory that to hold otherwise would nullify the statute of descent.[2] The courts of this third class express dissatisfaction with the result.[3] In these states the only solution to the problem is to pass statutes providing that

[1] See 29 MICH. L. REV. 745 (1931); 8 N. Y. UNIV. L. Q. REV. 492 (1931); 19 VA. L. REV. 518 (1933).

[2] For a recent list of the cases following these three views and the arguments for and against each, see 29 MICH. L. REV. 745 (1931). Bryant v. Bryant, 193 N. C. 372, 137 S. E. 188 (1927), makes a comprehensive collection of all the cases to that date.

[3] Wall v. Pfanschmidt, 265 Ill. 180, 106 N. E. 785 (1914); Hagan v. Cone, 21 Ga. App. 416, 94 S. E. 602 (1917); Carpenter's Estate, 170 Pa. 203, 32 Atl. 637 (1895); Eversole v. Eversole, 169 Ky. 793, 185 S. W. 487 (1916); McAllister v. Fair, 72 Kan. 533, 84 Pac. 112 (1906); Gollnik v. Mengel, 112 Minn. 349, 128 N. W. 292 (1910).

the murderer shall not take. At least eighteen jurisdictions have such statutes,[4] but the courts have often construed them so strictly as to defeat their apparent purpose.[5] These statutes are remedial, seeking only to prevent the evil of allowing a wrongdoer to benefit from his act, and in case of ambiguity should be liberally construed to accomplish the purpose of the legislature and suppress the mischief against which they are aimed.[6] They do not require strict construction since they are not of a criminal nature.[7] A majority of these statutes require that a person be "convicted" of murder in the usual criminal trial.[8] It is submitted, however, that the court in the instant case would have been justified, where the statute requires only that the accused shall be "finally adjudged guilty," in holding that a finding of the father's inability to take under the statute by the court having jurisdiction over the distribution of the daughter's estate was sufficient.[9] The right of inheritance is wholly in the control of the legislature,[10] and a statute providing that a person should be deprived of the right of inheritance who had been found guilty of the murder of his ancestor by the probate court should be held valid in cases where the usual trial is impossible. The court here admits that the decision does not attain the purpose of the statute, which was to change the rule laid down in *Carpenter's Estate*.[11] Although the term "finally adjudged guilty" could be strictly construed as meaning "conviction," a more liberal construction, that it means a final adjudication by the probate court, would more nearly effect the purpose of the statute. In view of the difficulty of making rigid legislative enactments apply to all cases where the heir murders the ancestor, it is desirable that the courts in states where the rule is not yet settled, even in the absence of statute, shall consider such cases broadly, having in view the public policy of preventing the murderer from taking.[12] Any other rule outrages every sense of justice.

L. W. I.

[4] See Bordwell, "Statute Law of Wills," 14 IOWA L. REV. 283 at 304 (1929), also 29 MICH. L. REV. 745 (1931).

[5] Hogg v. Whitham, 120 Kan. 341, 242 Pac. 1021 (1926); In re Kuhn's Estate, 125 Iowa 449, 101 N. W. 151 (1904); In re Emerson's Estate, 191 Iowa 900, 183 N. W. 327 (1921).

[6] See BLACK, INTERPRETATION OF LAWS, 2d ed., 487 (1911), and 2 LEWIS' SUTHERLAND, STATUTORY CONSTRUCTION, 2d ed., 1074 (1904).

[7] See BLACK, INTERPRETATION OF LAWS, 2d ed., 451 (1911), and 2 LEWIS' SUTHERLAND, STATUTORY CONSTRUCTION, 2d ed., 961 (1904).

[8] For a discussion of these statutes, see 29 MICH. L. REV. 745 (1931) and 14 IOWA L. REV. 304, and Hogg v. Whitham, 120 Kan. 341, 242 Pac. 1021 (1926).

[9] See dissenting opinion of Frazer, C. J., in the instant case for an argument to this effect.

[10] Magoun v. Illinois Trust and Savings Bank, 170 U. S. 283, 18 Sup. Ct. 594 (1898); Knowlton v. Moore, 178 U. S. 41, 20 Sup. Ct. 747 (1899); In re Emerson's Estate, 191 Iowa 900, 183 N. W. 327 (1921); ROOD, WILLS, 2d ed., 796 (1926).

[11] Carpenter's Estate, 170 Pa. 203, 32 Atl. 637 (1895).

[12] Garwols v. Bankers Trust Co., 251 Mich. 420, 232 N. W. 239 (1930); Slocum v. Metropolitan Life Ins. Co., 245 Mass. 565, 139 N. E. 816 (1923); Perry v. Strawbridge, 209 Mo. 621, 108 S. W. 641 (1908). See 19 VA. L. REV. 518 (1933).