

June 1956

Property--Joint Tenancy--Effect of Murder on the Right of Survivorship

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Recommended Citation

W. A. K., *Property--Joint Tenancy--Effect of Murder on the Right of Survivorship*, 58 W. Va. L. Rev. (1956).
Available at: <https://researchrepository.wvu.edu/wvlr/vol58/iss4/15>

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authority to deny a witness the privilege against self-incrimination and thereby, can compel him to testify where the statute grants complete immunity to the witness from prosecution concerning such matters.

R. W. F.

PROPERTY--JOINT TENANCY--EFFECT OF MURDER ON THE RIGHT OF SURVIVORSHIP.—*H* and *W*, husband and wife, owned property in joint tenancy. *H* murdered *W*, was convicted, and was sentenced to the penitentiary. *W*'s heir-at-law sued to recover the property from *H*, contending that *H* held the property on a constructive trust for *W*'s heir. *Held*, that a joint tenant who murders his cotenant destroys all rights of survivorship and retains only the title to his undivided one-half interest in the property as a tenant in common with the heir-at-law of the decedent. *Bradley v. Fox*, 7 Ill.2d 106, 129 N.E.2d 699 (1955). In so holding, the court overruled its earlier decision in *Welsh v. James*, 408 Ill. 18, 95 N.E.2d 872 (1950).

It is a maxim of equity that "No person will be permitted to benefit from his wrong." This, however, comes into conflict with the right of inheritance (1) when an heir murders an ancestor, (2) when a legatee or devisee murders the testator, (3) when a beneficiary of a life insurance policy murders the insured, and (4) when a joint tenant murders his cotenant. [Tenancies by the entirety are generally treated the same as joint tenancies. For a collection of cases, see Annot., 32 A.L.R.2d 1102 (1953).]

Different courts have reached different results in determining this conflict. In the first three situations the courts allow the murderer to take the inheritance but require him to hold it on a constructive trust so that he will not benefit from his wrong. RESTATEMENT, RESTITUTION, §§ 187, 189 (1937). But in dealing with a joint tenancy, the courts have divided at least five different ways. This diversity is caused by the legal fiction that a joint tenant holds the entire estate from the time of the original investiture, which factor is not present in the other situations.

In *Neiman v. Hurff*, 11 N.J. 55, 93 A.2d 345 (1952), where the husband murdered his wife with whom he held stocks as a joint tenant, the court held that the husband would take all the shares of stock, but would hold them in trust for a legatee under his wife's will, subject to a lien for the commuted value of his interest in the stocks which would be a life estate in one-half of the net income.

However, the court in *Welsh v. James, supra*, allowed the murderer to take the entire estate without imposition of a constructive trust. The court reasoned that a joint tenant holds the entire estate from the time of the original investiture and thus receives nothing at the death of his cotenant. To require him to hold this estate on a constructive trust after he murders the cotenant would be to impose a forfeiture of property for a criminal act and would violate the state constitutional mandate against forfeiture of estate. Cf. *Oleff v. Hodapp*, 129 Ohio St. 432, 195 N.E. 838 (1935).

The court in *Bierbrauer v. Moran*, 244 App. Div. 87, 279 N.Y.S. 176 (1935), took the opposite view, holding, without citation of any supporting authority, that legal title passed directly to the heirs of the decedent at the time of the death.

In re King's Estate, 261 Wis. 266, 52 N.W.2d 885 (1952), illustrates a fourth view. The legal fiction that a joint tenant holds the entire estate from the time of the original investiture is interpreted to mean that the joint tenant acquires two rights at the time of the investiture: (1) the right to enjoy the property equally with the cotenant during the latter's lifetime and (2) the right to have the entire estate upon the death of the cotenant. When the murder occurs, the murderer retains the first right but the second right fails. It cannot be consummated through a wrongful act. Thus the murderer retains the right to enjoy the property equally with the heirs of the decedent for his life and the heirs are entitled to the entire estate by survivorship.

A fifth result is reached in the principal case. The court interpreted the rights of a joint tenant in a way similar to that of the Wisconsin court, but reached a different conclusion. Although a joint tenant holds the entire estate from the time of the original investiture, he does so subject to the rights of the other joint tenant. He must share the profits, the possession, etc. Thus complete ownership depends upon survivorship and passes to one joint tenant upon the death of the other. To deprive a murderer of these rights would not violate the state constitutional mandate against forfeiture. The court then concluded that murder severs a joint tenancy and converts it into a tenancy in common. Thus the murderer holds title to an undivided one-half interest in the property as tenant in common with the heir-at-law of the decedent.

A joint tenancy may be terminated or severed by any act which destroys one or more of its unities, unity of interest, title, time, or possession. This may be done in any number of ways: by

assignment, mortgage, pledge, levy and sale, partition, or agreement to treat the interest as belonging to the tenants as tenants in common. 48 C.J.S. 927 (1947). The principal case adds one more method, *i.e.*, murder. The court in *In re King's Estate, supra*, expressly refused to add murder as an "approved" method by which a joint tenancy may be converted into a tenancy in common.

These cases reveal a tendency on the part of the courts to favor the maxim precluding benefit from one's own wrong over the right to inherit property. The courts do not agree upon the rationale or the proper method for resolving the conflict, but they do agree that the murderer should not benefit from his wrongful act.

W. A. K.

PUBLIC UTILITIES--INJUNCTION AGAINST GOVERNMENT AGENCIES.—Plaintiffs, a group of privately owned electric power utilities, sought to enjoin the Rural Electrification Administration (REA) and the Southwestern Power Administration (SPA), federal agencies within the Departments of Agriculture and Interior respectively, from entering into certain contracts with private federated power cooperatives. By these contracts, REA, which is empowered to lend money for "the purpose of furnishing electric energy to persons not receiving central station service" would lend money to the cooperatives for the construction of generation, transmission, and related facilities. Plaintiffs were then furnishing the cooperatives with central station service. Under a provision of the contract with REA, the cooperatives were to enter into a separate contract with SPA to sell all the power produced at the new generating plant to SPA and to construct and lease transmission lines to SPA. SPA in turn, was to supply the cooperatives with all their power requirements, which the plaintiffs were then doing. The cooperatives could buy power from any other source in case SPA was unable to furnish all their requirements. The plaintiffs sought to enjoin on the grounds that the contracts violated the loan standards of the REA and enabled the cooperatives to engage in ruinous competition with the plaintiffs. *Held*, on appeal, that the competition which the plaintiffs would suffer as a result of these contracts was not a sufficient interest to enable the plaintiffs to sue. *Kansas City Power & Light Co. v. McKay*, 225 F.2d 924 (D.C. Cir. 1955).

In the instant case the court applied the rationale laid down in *Tennessee Power Co. v. TVA*, 306 U.S. 118 (1939), and *Alabama*