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Equity--Inheritance From Ancestor Who Was Killed By Heir

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EQUITY—INHERITANCE FROM ANCESTOR WHO WAS KILLED BY HEIR.—H, while shooting at an alleged rival for his wife's affections, shot and killed his wife. He was acquitted of unlawful homicide. His wife died intestate and her heirs were *H* and a son by a former marriage. The son and the wife's administrator brought a declaratory judgment action to bar *H* from inheriting, alleging that the homicide was unlawful, wrongful, and felonious. By statute anyone convicted of unlawfully killing another person was barred from inheriting from that person. *H* therefore offered his acquittal to prove his right to inherit. The court excluded this as evidence, holding that the statute went no further than to allow a conviction to be entered as conclusive evidence of guilt. In cases where there is no conviction, the court still must follow the common law that criminal trials have no effect on civil trials involving the same issues and that the civil court must reconsider the same issues itself. The court then held that *H* could inherit from his wife, anyway, since he did not kill her intentionally. Although there is a maxim that a person can not benefit from his wrong, the court held that this wrong must be intentional as to the person killed before the maxim is controlling. *Legette v. Smith,* 85 S.E.2d 576 (S.C. 1955).

The decision presents two points worthy of consideration in light of West Virginia law: (1) the effect of statutes upon the common law rule that decisions of a criminal court are not competent as evidence in civil trials, and (2) the interpretations of the common law maxim that the wrong must be intentional.

W. VA. CODE c. 42, art. 4, § 2 (Michie 1955), reads in part as follows: "No person who has been convicted of feloniously killing another . . . shall take or acquire any money or property . . . from the one killed . . . either by descent and distribution or by will or by insurance." Such money is to go to those persons who would take if the one so barred had been dead when the killing occurred. This statute is similar to the one in effect in South Carolina and has been construed in the same way as the one in South Carolina. At common law the outcome of a criminal trial has no effect upon the outcome of a civil trial on the same issues. *Dry Goods Stores v. Williamson,* 91 W. Va. 156, 112 S.E. 301 (1922). The record of a conviction or acquittal in a criminal trial is not competent evidence in a civil suit to prove the facts upon which it is based. See Annot., 31 A.L.R. 262 (1924). The effect of the statute is to make proof of conviction admissible and sufficient to prove the guilt of the accused in the civil court, but goes no further. An acquittal can not be entered as evidence and in such cases the court must

determine the guilt itself. *Metropolitan Life Ins. Co. v. Hill,* 155 W. Va. 515, 177 S.E. 188 (1934). Therefore, one who is convicted of killing another is barred from receiving legal title to the decedent's property. If he is not convicted, he may receive the legal title, but equity will enforce a constructive trust against him if the court decides that he was guilty of a wrong.

The maxim "He who comes into equity must come with clean hands" has several cognate maxims including the one under consideration, "No person may be permitted to benefit from his wrong." If a person acquires property through some wrong he has committed, equity will require him to hold it in trust for someone else who should be entitled to the property. However, such a constructive trust will not be enforced unless the wrong was intentional. 30 C.J.S. 482 (1942). In the principal case, the death of the wife was not intended, but *H* acted deliberately when he shot the gun. Should the maxim be applied to such a situation? *Intentional* may refer to the acts of the accused or it may refer to the results of his actions. When neither is intentional, the maxim does not apply even though the accused is guilty of a wrong. In *Throop v. Western Indemnity Co.,* 49 Cal. App. 322, 193 Pac. 263 (1920), it was held that a death which is unintentional, though caused by some negligence or unlawful act should not bar the killer from inheriting. There the husband killed his wife while negligently handling a rifle. In *Minasian v. Aetna Life Ins. Co.,* 295 Mass. 1, 3 N.E.2d 17 (1936), recovery was permitted where the husband negligently killed his wife. The court limited the maxim to those cases where the death was a result of an intentional injury of a kind likely to cause death.

However, in the principal case the acts were deliberate and intentional but the results were unintentional. It is clear that the maxim applies where both are intentional. *Johnson v. Insurance Co.,* 85 W. Va. 70, 100 S.E. 865 (1919). But West Virginia has no case where the result was not intentional. Criminal courts get around such a situation by adopting a legal fiction. The intent is said to follow the act or bullet as in this case. Thus the result is intentional. The principal case says that this is proper since criminal courts are set up to punish criminal intent. However, civil courts should not follow this fiction, but should look to see if the result was intended. By dicta in *Metropolitan Life Ins. Co. v. McDavid,* 39 F. Supp. 228 (E.D. Mich. 1941), it was said that if *A* shoots at *B* and accidentally kills *C,* he would be able to inherit from *C* even though he would be guilty of murder. In *In re Wolf,*

88 Misc. 433, 150 N.Y.S. 738 (Sur. Ct. 1914), the facts were similar to those in the principal case. There the judge allowed a recovery, holding that the death should have been produced by the accused intentionally and for the purpose of affecting the descent and distribution of the deceased's estate before a recovery is denied. This decision was criticised in *In re Sparks' Estate,* 172 Misc. 642, 14 N.Y.S.2d 926 (Sur. Ct. 1939). In that case the husband killed his wife intentionally and was found guilty of manslaughter. He relied upon the *Wolfe* case, since he did not intend to affect the descent and distribution of his wife's estate. The court found against him, but this does not overrule the *Wolf* case in which there was no intent to kill the wife.

From a consideration of these cases it would seem that the maxim would not apply where the accused acted deliberately but produced results which were unintentional. South Carolina has a direct holding to this effect in the principal case; New York has a direct holding which has been criticized; and Michigan has dicta which supports the reasoning.

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FOREIGN CORPORATIONS—SERVICE OF PROCESS ON AUDITOR AFTER WITHDRAWAL IN TORT CASE—CAUSE OF ACTION AROSE AFTER WITHDRAWAL.—Action against a foreign corporation for injury to property resulting from flow of water and accumulation of debris allegedly caused by *D*'s negligence. The circuit court dismissed the action on the ground that it had no jurisdiction, saying that service on the auditor was void since *D* had been issued a withdrawal certificate from the state one year prior to the injury. *P* brought error. *Held,* that the statutory authority of the auditor to accept service of process as attorney in fact for foreign corporations did not extend to a tort case based upon a cause of action which did not arise until after the corporation had been properly issued a withdrawal certificate from the state. Affirmed, with one dissent. *DeBoard v. B. Perini & Sons,* 87 S.E.2d 462 (W. Va. 1955).

When a foreign corporation undertakes to do business in West Virginia, it is required to comply with certain regulations. Among them is the automatic appointment of the state auditor as its attorney in fact, giving him the authority "to accept service of notice and process on behalf of" every such corporation. W. VA. CODE c. 31, art. 1, § 71 (Michie 1955). When the foreign corporation leaves the state, it must procure a withdrawal certificate, but