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CONSTRUCTIVE TRUSTS—ACQUISITION OF PROPERTY BY MURDERER—TENANCY BY THE ENTIRETY.—*H* and *W*, husband and wife, held real estate as tenants by the entireties. *H* shot and killed *W*, and then took his own life. *W*'s heirs bring action to determine title to the property. By statute anyone convicted of intentionally killing another person becomes a constructive trustee of any property he may acquire from the decedent for the sole benefit of decedent's heirs. *Held*, affirming judgment for *H*'s heirs, that each spouse held the entire estate from the time of the original investiture, and *H* acquired no new interest on the death of *W* due to the legal fiction of unity created by marriage. The court also found that the pertinent statute was not applicable for there was no conviction as required by the legislature. Dissent pointed out that by permitting *H*'s heirs to take title, the majority opinion allowed *H* to benefit by his crime; and that the factual situation presented here is not provided for by the statute, for there was no opportunity to indict and try *H*. *National City Bank v. Bledsoe*, 133 N.E.2d 887 (Ind. 1956).

Can a murderer acquire property as a result of his crime? This question has so perplexed our courts, that there have been many divergent decisions in attempting to reach an equitable solution concerning property held as tenants by the entireties. The different views are as follows: (1) All rights to the property pass to the victim's heirs. *Van Alstyne v. Tuffy*, 103 Misc. 455, 169 N.Y. Supp. 173 (Sup. Ct. 1918). (2) The entire property is in the murderous spouse. *Beddingfield v. Estill & Newman*, 118 Tenn. 39, 100 S.W. 108 (1908). (3) One-half is given to the victim's estate, the other one-half to the murderer's estate. *Cowan v. Pleasant*, 263 S.W.2d 494 (Ky. 1953). (4) "The legal title passes to the murderer, but equity will treat him as a constructive trustee of the title because of the unconscionable mode of its acquisition, and compel him to convey it to the heirs of the deceased, exclusive of the murderer." AMES, LECTURES ON LEGAL HISTORY 310, 311 (1913). However even the courts that follow this theory are divided as to what size estate the beneficiary of the trust receives. In *Barnett v. Couey*, 224 Mo. App. 913, 27 S.W.2d 757 (1930), the property was treated as if held by tenants in common and a constructive trust was created for one-half. (It should be noted that the plaintiff only petitioned for one-half.) In a leading case, a North Carolina court held the victim's heirs beneficiaries of the entire property subject to a life estate in the wrongdoer. (In the statement of facts the court notes that the

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victim had a greater life expectancy.) *Bryant v. Bryant*, 193 N.C. 372, 137 S.E. 188 (1927). Mortality tables were used to give the heirs of the victim a life estate in one-half of the property because the murderer had a greater life expectancy than the decedent. *Sherman v. Weber*, 113 N.J. Eq. 451, 167 Atl. 517 (1933). In *Neiman v. Hurff*, 11 N.J. 55, 93 A.2d 345 (1952), the court presumed the victim would have survived the wrongdoer so that the decedent's heirs received a one-half interest in the property outright and a remainder in the other one-half interest, it being subject to the murderer's life estate.

The confusion in results stems from the conflict originating back when the common law courts were entirely distinct from the equity courts. From the law courts came the ancient legal fiction of unity of husband and wife, while from equity came the maxim that "no one shall be permitted to profit by his own wrong." Also there is the problem brought about by the fact that the wrongdoer in effect does receive a practical benefit in that before the murder he had to share the property with his fellow tenant and there was the possibility of loss of the remainder if his cotenant outlived him. After the wrongful act he has complete possession and there is no possibility of losing any interest. The difficulty in using this argument is due to a common constitutional provision such as in West Virginia that "no conviction shall work corruption of blood or forfeiture of estate", W. VA. CONST. art. 3, §18, and to a conception that to deprive the survivor of the property would violate this provision.

The constructive trust theory appears to be the superior solution. The wrongdoer is not deprived of any property in contravention to either the legal principle of unity through marriage or the constitutional provision against forfeiture, yet the equity maxim is followed and he receives no property as a result of his wrong. Fortunately the West Virginia court will not be faced with the argument provided by the legal fiction of unity of husband and wife due to W. VA. CODE c. 36, art. 1, §19 (Michie 1955), which has been construed in *McNeeley v. South Penn Oil Co.*, 52 W. Va. 616, 44 S.E. 508 (1903), to say that tenancies by the entireties no longer exist in West Virginia and that now they are to be considered as joint tenancies.

However the Indiana court employed the absence of a conviction, as required by statute before a constructive trust can be en-

forced, to deny relief. Our courts may have to answer a similar argument due to a local statute which provides: "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 . . . or otherwise." W. VA. CODE c. 42, art. 4, §2 (Michie 1955).

The dissent pointed out that there was no opportunity to convict due to the immediate suicide so that Indiana "has no statute applicable to [the] situation presented here." This gives the court the opportunity to rely upon general equitable principles to find a constructive trust without any legislative aid. *National City Bank v. Bledsoe*, *supra* at 895. See Colson, *Constructive Trusts in West Virginia*, 45 W. VA. L.Q. 357, 364 (1939). As Professor Landis suggests if the statute doesn't literally apply the court should ask the question: Does the policy behind the statute cover this situation? Once the basic purpose is discovered it is up to the court to expand and give effect to the statute beyond the express terms. Landis, *Statutes and the Sources of Law*, HARVARD LEGAL ESSAYS 213 (1934). See *Metropolitan Life Ins. Co. v. Hill*, 115 W. VA. 515, 177 S.E. 188 (1934). Using this approach to statutory interpretation it would not be difficult to find a constructive trust with or without a conviction.

M. J. P.

LANDLORD AND TENANT—ASSIGNMENT OR SUBLEASE.—By two leases executed on different dates, A leased to B all the coal in two seams underlying certain West Virginia and Virginia land for terms of twelve years with options to renew for like periods until the coal was exhausted. The lessee was given the right to remove all tipples, machinery and other personal property within six months after termination of the leases, otherwise than by forfeiture. B assigned all his rights under the leases to C who opened a mine on the premises. Subsequently, C transferred to D the right to operate the mine and also the right to use the tittle, machinery and equipment belonging to C. The agreement was to remain in effect until the coal was exhausted. Upon termination of the leases, D was to surrender the premises together with the equipment and machinery to C. After the tittle was destroyed by fire, all mining operations ceased and the equipment was removed. D attempted to exercise the option to renew one of the leases, but A denied his right to do so and brought suit for surrender of the premises and for an injunction to restrain D from mining coal from the property. *Held*, that D was