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## Constructive Trusts--Survivorship in Joint Tenancy--Right of Murderer to Recover Entire Fund of Deceased

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CONSTRUCTIVE TRUSTS — SURVIVORSHIP IN JOINT TENANCY — RIGHT OF MURDERER TO RECOVER ENTIRE FUND OF DECEASED. — The plaintiff's intestate and the defendant were codepositors of a joint survivorship bank account. The defendant murdered his cotenant and claimed the deposit which was in the hands of the plaintiff as administrator. *Held*, that the defendant could recover the entire fund. Judgment of the lower court affirmed. *Oleff v. Hodapp*.<sup>1</sup>

In the absence of statutes, most courts have allowed the murderer to acquire property in the estate of his victim,<sup>2</sup> regardless of the intent with which the crime was committed.<sup>3</sup> This result is grounded in the concept that the devolution of property is controlled entirely by statutes of descent and distribution which may not be varied even in the face of sound public policy.<sup>4</sup> The constitutional provisions against corruption of blood<sup>5</sup> and forfeiture of property as a punishment for crime<sup>6</sup> are sometimes invoked where the murderer is permitted to inherit the property of his victim. This admittedly undesirable result<sup>7</sup> has led to the passage of statutes in several states to prevent a recurrence of such decisions.<sup>8</sup>

Some jurisdictions have refused, however, to allow title to pass to the malfeasor upon the equitable principle that no person may profit by his own fraud or found a claim on his own inequity.<sup>9</sup> Thus these courts find no difficulty in interpreting the statute of

<sup>1</sup> 129 Ohio St. 432, 195 N. E. 838 (1935).

<sup>2</sup> *Wall v. Pfanschmidt*, 265 Ill. 180, 106 N. E. 785 (1914); *McAllister v. Fair*, 72 Kan. 533, 84 Pac. 112 (1906); *Shellenberger v. Ransom*, 41 Neb. 631, 59 N. W. 935 (1894); *Holloway v. McCormick*, 41 Okla. 1, 136 Pac. 1111 (1913); *Eversole v. Eversole*, 169 Ky. 793, 185 S. W. 487 (1916); *Wilson v. Randolph*, 50 Neb. 371, 261 Pac. 654 (1927).

<sup>3</sup> See holding that the intent motivating the crime was of no effect. *Hagan v. Cone*, 21 Ga. App. 416, 94 S. E. 602 (1917); *DeGraffenreid v. Iowa L. & T. Co.*, 20 Okla. 687, 95 Pac. 624 (1908); *Holloway v. McCormick*, *supra* n. 2. *Contra*, *Gollnik v. Mengel*, 112 Minn. 349, 128 N. W. 292 (1920).

<sup>4</sup> *In re Carpenter's Estate*, 170 Pa. 203, 32 Atl. 637 (1895); *McAllister v. Fair*, *supra* n. 2; *Wall v. Pfanschmidt*, *supra* n. 2; *Shellenberger v. Ransom*, *supra* n. 2.

<sup>5</sup> *Holloway v. McCormick*, *supra* n. 2; *In re Carpenter's Estate*, *supra* n. 4; *McAllister v. Fair*, *supra* n. 2.

<sup>6</sup> *Wall v. Pfanschmidt*, *supra* n. 2; *Wilson v. Randolph*, *supra* n. 2; *Holloway v. McCormick*, *supra* n. 2.

<sup>7</sup> Many courts express their reluctance and distaste in allowing the murderer to thus acquire property, but frankly admit their inability to arrive at a contrary decision upon strict legal principles. See *Hagan v. Cone*, *supra* n. 3; *Holloway v. McCormick*, *supra* n. 2; *McAllister v. Fair*, *supra* n. 2.

<sup>8</sup> For reference to these statutes, see Note (1934) 44 YALE L. J. 164.

<sup>9</sup> *Biggs v. Palmer*, 115 N. Y. 506, 22 N. E. 188 (1889); *Garwols v. Bankers' Trust Co.*, 251 Mich. 420, 232 N. W. 239 (1930); *In re Tyler's Estate*, 140 Wash. 679, 250 Pac. 456 (1926); *Perry v. Strawbridge*, 209 Mo. 621, 108 S. W. 641 (1908).

wills and statutes of descent in the light of this equitable concept. This technique, while attaining a desirable result, has been criticized as unjustifiable judicial legislation.<sup>10</sup>

Other courts while recognizing the impossibility of contravening of the statutes of descent and distribution, impose a constructive trust upon the wrongdoer in favor of the next of kin or the heirs at law of the deceased, exclusive of the murderer.<sup>11</sup> Such reasoning has met with much approval among legal writers<sup>12</sup> since it achieves a sound result without sacrifice of the policy of the statutes of descent and distribution. This doctrine has been applied in a New York case<sup>13</sup> involving a joint-survivorship bank account and in analogous cases of tenancy by entirety.<sup>14</sup> In the present case it was argued that a constructive trust could not be imposed because the defendant's rights were not enhanced by the death of his codepositor. It is believed that such reasoning ignores the true facts.<sup>15</sup> Before his crime the defendant had only a contingent right based on his withdrawal of the deposit before the other depositor removed the money. Afterwards he acquired an absolute and exclusive right to the deposit. Technical reasoning to the contrary notwithstanding, it seems clear that the defendant will reap a substantial benefit from his wrongful act.

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CONTRACTS — THIRD PARTY CREDITOR-BENEFICIARY CONTRACT ENFORCED AT LAW. — Action on a life insurance policy issued by A company to B, naming C as beneficiary. A company was adjudged insolvent and title to its assets vested in X with power to sell the same. X contracted with Y company who agreed to

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<sup>10</sup> Note (1894) 8 HARV. L. REV. 170.

<sup>11</sup> Courts have applied the doctrine of a constructive trust in the following cases: *Ellerson v. Westcott*, 148 N. Y. 149, 42 N. E. 540; *Barnett v. Couey*, 224 Mo. App. 913, 27 S. W. (2d) 757 (1930); *Bryant v. Bryant*, 193 N. C. 372, 137 S. E. 188 (1927); *Sherman v. Weber*, 113 N. J. Eq. 451, 167 Atl. 517 (1933); *In re Santourian's Estate*, 125 Misc. Rep. 668, 212 N. Y. Supp. 116 (1925).

<sup>12</sup> For discussion of the doctrine of constructive trust, see: Ames, *Can a Murderer Acquire Title by His Crime and Keep It?* (1897) 36 AM. L. REG. (N. S.) 225; Notes (1897) 8 HARV. L. REV. 170; (1895) 9 HARV. L. REV. 474; (1931) 44 HARV. L. REV. 125

<sup>13</sup> *In re Santourian's Estate*, *supra* n. 11.

<sup>14</sup> *Bryant v. Bryant*, *supra* n. 11; *Barnett v. Couey*, *supra* n. 11; *Sherman v. Weber*, *supra* n. 11; *Van Alstyne v. Tuffy*, 103 Misc. Rep. 455, 169 N. Y. Supp. 173 (1918).

<sup>15</sup> It has been held that for the purpose of taxation the court will recognize the enhancement of one party's rights by the death of the cotenant. See *Tyler v. United States*, 281 U. S. 497, 50 S. Ct. 356 (1930); *Gwinn v. Commissioner of Internal Revenue*, 54 F. (2d) 728 (C. C. A. 9th, 1932).