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Estates by the Entirety: Effect of Murder by Cotenant

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Defendant's motion for discovery of certain designated documents pertaining to plaintiff's businesses was allowed by the chancellor, but the Supreme Court on interlocutory certiorari held discovery unnecessary in view of plaintiff's reply. Denial of discovery in such a situation seems fully warranted; but in the principal case there was no showing that discovery was immaterial to the issues.

While the decision might be explained on the theory that the request and order as phrased were perhaps somewhat broader than strictly necessary, the fact remains that continual denial by the Supreme Court of discovery at law as used in the federal courts, and of discovery in equity in the manner provided by Florida Equity Rule 49, imposes serious limitations on the usefulness of this important procedural device.

FLOYD V. HULL, JR.

ESTATES BY THE ENTIRETY: EFFECT OF MURDER BY COTENANT

Ashwood v. Patterson, 49 So. 2d 848 (Fla. 1951)

Husband and wife held property as tenants by the entirety. The husband murdered his wife and committed suicide immediately thereafter. There were no children of this marriage, but each spouse had issue by a former marriage. Plaintiffs, sole heirs of the husband, sought a determination of their rights in the property and the lower court awarded the entire property to the heir of the wife. On appeal, HELD, the property is divisible in equal portions to the heirs of each spouse, as if formerly held as a tenancy in common; the statute forbidding a murderer to inherit from his victim[1] is inapplicable; and the fiction of unity of estate is destroyed. Decree reversed, Justices Terrell and Chapman dissenting.

This case establishes the precedence of the equitable maxim that no one shall be permitted to profit from his own wrong or acquire property by his own crime[2] over the fiction of the law that each of

[1]FLA. STAT. §731.31 (1949).

[2]See, *e.g.*, Weaver v. Hollis, 247 Ala. 57, 22 So.2d 525 (1945); Riggs v. Palmer, 115 N.Y. 506, 22 N.E. 188 (1889); Van Alstyne v. Tuffy, 103 Misc. 455, 169 N.Y. Supp. 173 (Sup. Ct. 1918); *In re* Wilkins' Estate, 192 Wis. 111, 211 N.W. 652 (1927).

tenants by the entirety is seised of the whole of the estate by virtue of the original grant.[3] Some states adopt a strictly legalistic view and sustain the murderer's title on the ground that the denial of title or even the imposition of a constructive trust would violate constitutional provisions prohibiting forfeiture of estate.[4]

On the other hand, most courts recognize, in a practical way, that the murderer does acquire a sustantial gain, in that he no longer must share the profits of his estate nor is there any further possibility that he will be survived.[5] New York altogether bypasses legal barriers and awards the entire estate to the heirs of the victim.[6] Other states have used a constructive-trust doctrine as a means of reaching some middle ground whereby a just result can be reached that satisfies constitutional provisions and avoids overruling common law concepts. Under this theory the slayer does acquire legal title, but equity imposes a constructive trust on the property and it is held by the murderer for the benefit of those persons whose interests were taken away by his crime.[7] In order to limit the duration of the trust to the extent of the unjust enrichment of the murderer, and to reach the results that probably would have obtained had both parties died in the normal course of events, the court may determine the respective

[3]See, *e.g.*, Lilly v. Smith, 96 F.2d 341 (7th Cir. 1938); Andrews v. Andrews, 155 Fla. 654, 21 So.2d 205 (1945); Bailey v. Smith, 89 Fla. 303, 103 So. 833 (1925); Schwind v. O'Halloran, 346 Mo. 486, 142 S.W.2d 55 (1940); 4 THOMPSON, REAL PROPERTY §§1803-1806 (1940).

[4]Welsh v. James, 408 Ill. 18, 95 N.E.2d 872 (1950) (joint tenancy); Wenker v. Landon, 161 Ore. 265, 88 P.2d 971 (1939); Hamer v. Kinnan, 16 Dist. & Co. 395 (Pa. 1931); Beddingfield v. Estill, 118 Tenn. 39, 100 S.W. 108 (1906); *cf.* FLA. CONST. Decl. of Rights, §17; Wall v. Pfanschmidt, 265 Ill. 180, 106 N.E. 785 (1914) (inheritance); Owens v. Owens, 100 N.C. 240, 6 S.E. 794 (1888) (dower); Oleff v. Hodapp, 129 Ohio St. 432, 195 N.E. 838 (1935) (joint-and-survivorship building and loan association account).

[5]See Tyler v. United States, 281 U.S. 497 (1930); Grose v. Holland, 357 Mo. 874, 211 S.W.2d 464 (1948); Bryant v. Bryant, 193 N.C. 372, 137 S.E. 188 (1927); 3 BOGERT, TRUSTS AND TRUSTEES §478 (1946).

[6]Van Alstyne v. Tuffy, 103 Misc. 455, 169 N.Y. Supp. 173 (Sup. Ct. 1918); *cf.* Perry v. Strawbridge, 209 Mo. 621, 108 S.W. 641 (1908) (intestacy); Bierbrauer v. Moran, 244 App. Div. 87, 279 N.Y. Supp. 176 (4th Dep't 1935) (joint tenancy). *But cf. In re* Eckardt's Estate, 184 Misc. 748, 54 N.Y.S.2d 484 (Surr. Ct. 1945) (slayer insane).

[7]Sherman v. Weber, 113 N.J. Eq. 451, 167 Atl. 517 (Ch. 1933); Bryant v. Bryant, 193 N.C. 372, 137 S.E. 188 (1927); see 3 POMEROY, EQUITY JURISPRUDENCE §1044 (1941); RESTATEMENT, RESTITUTION §§187, 188 (1937); 11 N.Y.U.L.Q. REV. 298 (1933); 82 U. OF PA. L. REV. 183 (1933).

life expectancies of the spouses by reference to mortality tables.[8]

The Florida Court, in this case of first impression, preferred the views expressed in the Missouri decisions.[9] It pointed out that in order to meet the requirements imposed on a tenancy by the entirety the surviving spouse must be a survivor in contemplation of law as well as a survivor in fact; therefore it is indispensable that the demise of the cotenant not result from the other tenant's intentional act. By the felonious slaying of the spouse, the fiction of tenancy by the entirety is destroyed, as by divorce,[10] and the estate descends as though held by tenants in common.

As a fairly just solution characterized by expediency in application, the Florida holding has much to offer.[11] The problems inherent in the maintenance of a trust are obviated. The common law rule that a murderer shall not profit by his crime is satisfied. But whenever an equal division is not equitable, as upon the murder of a young spouse by an elderly one, strict justice is sacrificed to expediency. Whether the equitable rationale of the instant holding can be extended to effect an unequal cotenancy consistent with the demands of justice in a particular case is a question yet open in Florida.[12]

JOHN L. RILEY

HABEAS CORPUS: SCOPE OF JUDICIAL REVIEW IN EXTRADITION PROCEEDINGS

Sullivan v. State ex rel. *Pardew, 49 So.2d 800 (Fla. 1951)*

The Governor of Florida issued an extradition warrant for the arrest and detention of the petitioner on requisition of the Governor of New York. The sheriff of Dade County, acting on the authority of

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[8]*E.g.*, Sherman v. Weber, *supra* note 7.

[9]Grose v. Holland, 357 Mo. 874, 211 S.W.2d 464 (1948); Barnett v. Couey, 224 Mo. App. 913, 27 S.W.2d 757 (1930).

[10]FLA. STAT. §689.15 (1949).

[11]See Wade, *Acquisition of Property by Wilfully Killing Another — A Statutory Solution*, 49 HARV. L. REV. 715 (1936), for an excellent general discussion and a suggested model statute.

[12]The doctrine of the principal case may be followed strictly; see Hogan v. Martin, 52 So.2d 806 (Fla. 1951).