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Criminal Law - Murder - Year and a Day Rule

Bernard Haugan

same result[19] as that reached in the instant case. However, the North Dakota Supreme Court has allowed several exceptions to the rule excluding parol evidence.[20]

It is submitted that, since insertion of an integration clause into a contract has become such a common practice as to lose its distinctive character, its mere inclusion should not bar evidence which might otherwise be admitted. It may be surmised that, had the Oklahoma Court followed this suggestion, it would have held for the defendant.

MAURICE R. HUNKE

CRIMINAL LAW — MURDER — "YEAR AND A DAY" RULE.— Defendant was indicted for murder and manslaughter following the death of an assault victim struck on September 21, 1958, and who died November 1, 1959. From a lower court order overruling defendant's motion to quash the indictment, the defendant appeals. The Supreme Court of Pennsylvania *held,* two judges dissenting, that the common law rule that no one is responsible for a killing where death ensues beyond a year and a day after the stroke is not a part of the definition of murder but only a rule of evidence or procedure; and that the motion to quash was properly overruled. The dissent attacked this decision as being judicial legislation, spurning the law of cause and effect. *Commonwealth v. Ladd,* 402 Pa. 164, 166 A.2d 501 (1960).

At common law a killing does not constitute murder unless the death ensues within a year and a day after the stroke.[1] The inadequacy of medical science to establish beyond peradventure a causal connection between the injury and death which occurred a long period of time later led to the founding of the rule.[2]

Eleven states, including North Dakota, have statutes expressly promulgating the rule.[3] Judicial decisions, holding that legislative

19. See, *e.g.,* Mevorah v. Goodman, 79 N.D. 443, 57 N.W.2d 600 (1953); Hanes v. Mitchell, 78 N.D. 341, 49 N.W.2d 606 (1951); Larson v. Wood, 75 N.D. 9, 25 N.W.2d 100 (1946); Jensen v. Siegfried, 66 N.D. 222, 263 N.W. 715 (1935).

20. See, *e.g.,* Rule v. Connealy, 61 N.D. 57, 237 N.W. 197 (1931) (Allowed to show that delivery was conditional); Carufel v. Kountz, 60 N.D. 91, 232 N.W. 609 (1930) (fraud); Baird v. Divide County, 58 N.D. 867, 228 N.W. 226 (1929) (governmental body exceeded its authority); Erickson v. Wiper, 33 N.D. 193, 157 N.W. 592 (1916) (true consideration for a deed); Citizens' State Bank of Lankin v. Garceau, 22 N.D. 576, 134 N.W. 882 (1912) (defective title).

1. See 4 BLACKSTONE, COMMENTARIES 197 (Lewis's ed. 1897); 3 COKE, INSTITUTES 47 (1817).

2. State v. Huff, 11 Nev. 17 (1876); see 3 HOLDSWORTH, HISTORY OF ENGLISH LAW 315 (3rd ed. 1923).

3. N.D. Cent. Code § 12-27-27 (1961) "To make killing either murder or manslaughter in prosecutions for homicide, it is requisite that the party shall die within a year and a day after the stroke is received or the cause of death is administered. In the

silence does not abrogate the rule, but rather is evidence that it should persist, have introduced the rule into states without statutory provisions.[4] But the rule has encountered vehement opposition in New York where it has been wholly abrogated by statutory construction.[5]

Controversy exists as to whether the rule is a substantive part of the definition of murder[6] or whether it is a rule of evidence;[7] with the sides almost equally divided. The most recent case in point, while declaring the rule to be one of evidence and severely criticizing it, has upheld the rule as one which could only be changed by the legislature.[8]

Therefore, even upon the grounds that the rule is one of evidence the decision in the instant case is a severe departure from the principle of *stare decisis*. It would appear that this change, however, is based on good reason for none of the defendant's substantive rights will be denied. Two essential elements are still necessary to establish defendant's guilt. It must be proved beyond a reasonable doubt[9] that his act is the proximate cause; and there must exist no unforeseeable intervening agency.[10] Advancement in science and medicine has destroyed the logic of the rule;[11] and it has no counterpart in civil liability for wrongful death.[12] It has been considered by one authority to be merely an arbitrarily mechanical rule.[13] The rule often subsists only because of the infrequency of contested cases.[14]

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computation of a year and a day, the whole of the day on which the act was done shall be counted as the first day." Ariz. Rev. Stat. § 13-458 (1956); Ark. Stat. Ann. § 41-2210 (1947); Cal. Penal Code § 194 (1955); Colo. Rev. Stat. § 40-2-9 (1953); Del. Code Ann. § 11-573 (1953); Idaho Code Ann. § 18-4008 (1947); Ill. Ann. Stat. c. 38, § 365 (1960); Mont. Rev. Code § 94-2509 (1947); Nev. Rev. Stat. § 200.100 (1957); Utah Code Ann. § 76-30-7 (1953).

4. State v. Dailey, 191 Ind. 678, 134 N.E. 481 (1922); see Ball v. United States, 140, U.S. 118 (1891); Howard v. State, 24 Ala. App. 512, 137 So. 532 (1931); Head v. State, 68 Ga. App. 759, 24 S.E.2d 145 (1943); State v. Jamerson, 252 S.W. 682 (Mo. 1923).

5. People v. Brengard, 265 N.Y. 100, 191 N.E. 850 (1934); People v. Legeri, 239 App. Div. 47, 266 N.Y.S. 86 (1933) (These New York decisions hold that the common law rule has been abrogated by Section 22 of the New York Penal Law which abolishes all common law crimes, and Section 1044 which deliberately omits any limitation as to time in its definition of murder.)

6. State v. Moore, 196 La. 617, 199 So. 661 (1940); State v. Spadoni, 137 Wash. 684, 243 Pac. 854 (1926).

7. People v. Clark, 106 Cal. App. 2d 271, 235 P.2d 56 (1951); Head v. State, 68 Ga. App. 759, 24 S.E.2d 145 (1943); Elliot v. Mills, 335 P.2d 1104 (Okla. Crim. 1959); State v. Huff, 11 Nev. 17 (1876).

8. Elliot v. Mills, 335 P.2d 1104 (Okla. Crim. 1959).

9. People v. Brengard, 265 N.Y. 100, 191 N.E. 850 (1934).

10. See 65 Dick. L. Rev. 166 (1961).

11. See Head v. State, 68 Ga. App. 759, 24 S.E.2d 145 (1943); People v. Legeri, 239 App. Div. 47, 266 N.Y.S. 86 (1933); Elliot v. Mills, 335 P.2d 1104 (Okla. Crim. 1959).

12. Louisville, Evansville & St. Louis R.R. Co. v. Clarke, 152 U.S. 230 (1894).

13. See Perkins, Criminal Law 605 (1957).

14. See Zacharias, *Homicide: Why Death in a Year and a Day?* 19 Chi.-Kent L. Rev. 181, 187 (1941).

Therefore, it is submitted that the rule be abolished so that the prosecution may be given a chance to overcome the difficulty of proof if the proximate relationship between injury and death can be proved beyond a reasonable doubt.

BERNARD HAUGAN

DIVORCE DECREE — DURATION AND TERMINATION OF LIABILITY FOR SUPPORT — DOES THE FATHER'S OBLIGATION TO SUPPORT HIS MINOR CHILDREN TERMINATE AT HIS DEATH? — Petitioner, divorced wife of deceased brought on action against his estate as guardian of her minor daughter seeking an order to obtain monthly support payments accruing subsequent to the death of the deceased. The grounds of the petition were that the obligations of the deceased with respect to an agreement incorporated into a divorce decree survived his death. The Supreme Court of Mississippi, four justices dissenting, *held* that such liability may be imposed against the father's estate only when the contract to support, affirmatively so provides, either by express terms or fair implication. *Lewis v. Lewis*, 125 So. 2d 286 (Miss. 1960).

At common law the father's obligation to support his offspring terminated at his death.[1] The arguments given for adhering to the common law rule are that the father has the right to disinherit his children[2] and that to permit such obligation to survive would upset the laws regulating the distribution and devolution of estates.[3] Where a divorce decree alone has made provision for support payments[4] or where a prior agreement has been incorporated into the divorce decree,[5] a few jurisdictions hold that the obligation does not survive the father's death. This minority, relying on their interpretation of the separation agreement incorporated in the divorce decree, reason that it must so provide either expressly or by necessary implication in order that the payments survive the father's death.[6]

The weight of authority today, however, is that the support

1. Guinta v. LoRe, 31 So. 2d 704 (Fla. 1947) (dissenting opinion); Carey v. Carey, 163 Tenn. 486, 43 S.W.2d 498 (1931).
2. Robinson v. Robinson, 131 W. Va. 160, 50 S.E.2d 455 (1948).
3. Carey v. Carey, 163 Tenn. 486, 43, S.W.2d 498 (1931).
4. Cooper v. Cooper's Estate, 350 Ill. App. 37, 111 N.E.2d 564 (1953).
5. Gordon v. Gordon, 195 F.2d 779 (D.C. Cir. 1952); Bowling v. Robinson, 332 S.W.2d 285 (Ky. 1960); *In re* Johnson's Estate, 185 Misc. 352, 56 N.Y.S.2d 771 (Surr. Ct. 1945).
6. See Note 5 *supra*.