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Real Property - Joint Tenancy - Right of Survivor Who Feloniously Kills Cotenant

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equitable jurisdiction should not be determined solely on the basis of a rule of construction but rather on the merits of the case in the light of judicial precedent.[13]

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REAL PROPERTY – JOINT TENANCY – RIGHT OF SURVIVOR WHO FELONIOUSLY KILLS COTENANT. – The heirs of deceased joint tenant brought an action to impose a constructive trust on one-half of the property held by defendant as surviving joint tenant where the defendant while insane killed his co-tenant. It was *held* that insanity of the killer constitutes an exception to the general rule in Minnesota which imposes a constructive trust on property so obtained, and where insanity is established, the general principals of survivorship apply.[1] No constructive trust will be imposed, the insane killer taking the fee simple free of all trusts as the surviving joint tenant. *Anderson v. Grasberg*, 78 N.W.2d 450 (Minn. 1956).

The problem of the killer benefiting from his own wrong has been before the courts in relation to reversions,[2] remainders,[3] individual life insurance,[4] insurance on joint lives,[5] community property,[6] dower[7] and succession,[8] as well as joint tenancy and tenancy by the entireties.[9] In dealing with this situation, four theories have been advanced: certain courts apply only the equitable doctrine which prohibits a wrongdoer from profiting by his wrongful act, and thereby divest the killer of all jointly held property;[10] some courts completely ignore the equities and apply survivorship concepts to allow the slayer to take the fee to the jointly held property;[11] other courts applying the third and fourth theories seem to give equal weight to the equities and survivorship

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13. Note, 37 Iowa L. Rev. 268 (1952).

1. For allowing the defense of insanity, the court is supported by Eisenhardt v. Seigal, 343 Mo. 22, 119 S.W.2d 810 (1938).

2. Eisenhardt v. Seigal, *supra* note 1 (Victim held property on condition that it should revert if the victim predecease the murderer).

3. Wall v. Pfanschmidt, 265 Ill. 180, 106 N.E. 785 (1914); *In re* Emerson's Estate, 191 Iowa 900, 183 N.W. 327 (1921); Blanks v. Jiggetts, 192 Va. 337, 64 S.E.2d 809 (1951).

4. New York Mut. Life Ins. Co. v. Armstrong, 117 U. S. 591 (1886). See also Vance, Insurance § 117 (3d ed. 1951); Grossman, *Liability and Rights of the Insurer When the Death of the Insured Is Caused by the Beneficiary or an Assigns*, 10 B. U. L. Rev. 281 (1930).

5. Spicer v. New York Life Ins. Co., 268 Fed. 500 (5th Cir. 1920) *cert. denied*, 255 U. S. 572 (1921); Merrity v. Prudential Ins. Co., 110 N. J. L. 414, 166 Atl. 335 (1933).

6. Hill v. Noland, 149 S.W. 288 (Tex. Civ. App. 1912).

7. Barnes v. Cooper, 204 Ark. 118, 161 S.W.2d 8 (1942); Owens v. Owens, 100 N. C. 240, 6 S.E. 794 (1888).

8. Atkinson, Wills § 37 (2d ed. 1953); Restatement, Restitution § 187 (1937); Note, 29 Mich. L. Rev. 745, 746 (1931). Several states including North Dakota have a statute prohibiting the murderer from taking under a will of his victim. N. D. Rev. Code § 56-0423 (1943).

9. Although joint tenancy and tenancy by the entireties differ in certain respects, such as the methods by which they can be terminated, the courts generally treat the two types of estate in the same manner in relation to the present problem. *In re* Santourian's Estate, 125 Misc. 668, 212 N. Y. Supp. 116 (Surr. Ct. 1925) (joint tenancy in a bank account); Van Alystyne v. Tuffy, 103 Misc. 455, 169 N. Y. Supp. 173 (Sup. Ct. 1918) (Tenancy by the entireties).

10. *In re* Santourian's Estate, supra note 9 ("[I] am opposed to . . . any doctrine of law which offers a premium to husbands to kill their wives.")

11. Smith v. Greenberg, 121 Colo. 417, 218 P.2d 514 (1950).

theory and either impose a constructive trust or declare a severance of the tenancy.[12]

The rule which divests an assassin of all his interest in joint property is based solely upon the equitable doctrine and is applied by only one jurisdiction.[13] The completely opposite extreme is more popular, several states having allowed the slayer to take the entire interest.[14] he proponents of this rule contend that the property interest became vested in the joint tenants by the original contract or conveyance and that the survivor gained nothing from the cotenant's death that he did not previously have.[15] Certain writers critize this reasoning as medieval logic, over-emphasizing the fiction of survivorship and disregarding equitable considerations.[16]

Other courts, recognizing the practical, if not legal, benefit accruing to the self-made-survivor, when the courts of equity do not intervene,[17] have attempted to take a middle ground by the use of constructive trusts.[18] These courts vest the title to the property in the slayer, who holds all or a portion of the property in trust for the heirs of the victim. In theory the imposition of a constructive trust does not constitute a forfeiture.[19] However a forfeiture has in fact resulted since he no longer has a right to the benefits accruing from the property.

The fourth rule is the tenancy-in-common theory. The courts following this rule conclude that the killing of one joint tenant by the other terminates the right of survivorship, and the heirs of the deceased joint tenant are entitled to an undivided one-half interest as tenants in common with the surviving tenant.[20] This view appears to avoid the forfeiture problem since it is universally recognized that one tenant can sever the joint tenancy, transforming the relationship into one of tenancy-in-common by an act disharmonious with the joint tenancy relationship.[21]

It seems universal that succession statutes forbidding a slayer from succeed-

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12. Vesey v. Vesey, 237 Minn. 295, 54 N.W.2d 385 (1952) (imposition of a constructive trust); Bradley v. Fox, 129 N.E.2d 699 (Ill. 1956) (declaration of a tenancy-in-common).

13. *In re* Santourian's Estate, 125 Misc. 668, 212 N. Y. Supp. 116 (1925); Beribrauer v. Moran, 244 App. Div. 87, 279 N. Y. Supp. 176 (1935).

14. Smith v. Greenberg, 121 Colo. 417, 218 P.2d 514 (1950); National City Bank v. Bledsoe, 133 N.E.2d 887 (Ind. 1956); Oleff v. Hodapp, 129 Ohio St. 432, 195 N.E. 838 (1935); Wenker v. Landon, 161 Ore. 265, 88 P.2d 971 (1939); Beddington v. Estill & Newman, 118 Tenn. 39, 100 S.W. 108 (1907). While Illinois, in Walsh v. James, 408 Ill. 18, 95 N.E.2d 872 (1950), also subscribed to this doctrine, that case is now overruled and the court has chosen to declare a severance. See Bradley v. Fox, 129 N.E.2d 699 (Ill. 1956).

15. Oleff v. Hodapp, *supra* note 14 at 841, ("[P]roperty rights are too sacred to be subjected to such an attack. We experience no satisfaction in our holding, but that is the law and we must so hold.")

16. 3 Bogart, Trusts, and Trustees § 478 (2d ed. 1946).

17. Colton v. Wade, 32 Del. Ch. 122, 80 A.2d 923 (1951); Sherman v. Weber, 113 N.J.Eq. 451, 167 Atl. 517 (1933).

18. Colton v. Wade, *supra* note 17; Vesey v. Vesey, 237 Minn. 295, 54 N.W.2d 385 (1952); Bryant v. Bryant, 193 N. C. 372, 137 S.E. 188 (1927); Sherman v. Weber, *supra* note 17.

19. See Ellerson v. Wescott, 148 N. Y. 149, 42 N.E. 540 (1891); Bryant v. Bryant, *supra* note 18.

20. Ashwod v. Patterson, 49 So.2d 848 (Fla. 1951); Bradley v. Fox, 129 N.E.2d 699 (Ill. 1956); Grose v. Holland, 357 Mo. 834, 211 S.W.2d 464 (1948); Barnett v. Couey, 224 Mo. App. 913, 27 S.W.2d 757 (1930).

21. *In re* Heckman's Estate, 228 Iowa 967, 291 N.W. 465 (1940); Fleming v. Fleming, 194 Iowa 71, 174 N.W. 946 (1920); See Tiffany, Real Property § 425 (3d ed. 1939).

ing to the property of his victim are inapplicable.[22] However the absence of a statute expressly applicable[23] does not seem to be sufficient reason for allowing the slayer to take the entire estate in view of the contrary equities.[24]

It appears that the solution to the problem lies in legislation.[25] But the legislature in North Dakota has not, as yet, felt the need for such pronouncements and it is still a question whether adequate language can be devised to meet the peculiar sets of facts likely to arise.[26] One of the relevant problems presented to the legislature in this situation would be the state of the record title and its effect on the abstracting profession.[27] The North Dakota courts have not been faced with the problem, and are free to follow any of the four lines of authorities without being bound by statute or precedent.

The better view appears to be the tenancy-in-common theory. This rule presents not only the most equitable, but also the most legally jutifiable result. Under such a result the problem of forfeiture is avoided and the strong public policy against the assassin is well satisfied.[28]

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REAL PROPERTY — OIL AND GAS — EFFECT OF TAX SALE ON PREVIOUSLY SEVERED MINERAL INTERESTS. — In an action to quiet title to minerals, it appeared that the owner of certain lands in 1924 conveyed the surface to Odenthal, reserving all mineral rights; this deed was recorded. In 1932 the county took title for nonpayment of taxes, and in the same year conveyed the premises to McLain by tax deed, reciting the government description. McLain then conveyed to the defendant by warranty deed. In 1936 Odenthal's surface grantor quitclaimed the reserved mineral rights to Odenthal, who in 1954 conveyed these rights to plaintiffs by deed which was recorded one month prior to commencement of this suit. In affirming the trial court's decree for plaintiffs the court *held* that where a tax deed is taken after a severance of mineral rights, purporting to convey the government description without specifically including the mineral interests, the county acquires tax title to the surface only. *Bilby v. Wire,* 77 N.W.2d 882 (N. D. 1956).

Statutes in North Dakota, and most other jurisdictions, expressly provide for severance of mineral rights, and their separate taxation.[1] However, courts disagree as to what interests are derived from purchase of tax deed when mineral interests have been severed. This variation is due to procedural dif-

22. Ashwood v. Patterson, 49 So.2d 848 (Fla. 1951); Vesey v. Vesey, 237 Minn. 295, 54 N.W.2d 385 (1952); But some courts rely upon such a statute as an indication of public policy. See, Bradley v. Fox, 129 N.E.2d 699, 704 (Ill. 1955).

23. It appears that North Dakota has no express statute applicable to joint tenants in this problem. However, see N. D. Rev. Code § 56-0423 (1943) as applicable to wills and succession.

24. See Atkinson, Wills § 37 (2d ed. 1953); 3 Bogart, Trusts and Trustees § 478 (2d ed. 1946); 3 Scott, Trusts § 493.2 (1939).

25. For statutes covering the situation see Ky. Rev. Stat. § 381.280 (1955); Pa. Stat. Ann. tit. 20, § 3446 (Purdon's Supp. 1950); S. D. Code § 56.0505 (1939); See Wade, *Acquisition of Property by Wilfully Killing Another — A Statutory Solution,* 49 Harv. L. Rev. 715 (1935).

26. Wade, *supra* note 25.

27. A pertinent problem is whether the abstractor must look beyond the fact of death in a joint tenancy situation. For one solution see Wade, *supra* note 25 at 749.

28. Cardozo, Nature of the Judicial Process, 43 (1921) ("The social interest served by refusing to permit the criminal to profit by his crime is greater than that served by the presevation and enforcement of legal rights of ownership.")

1. *E. g.*, 18 Minn. Stat. Ann. § 272.04 (1945); N. D. Rev. Code § 57-0224 (1943); W. Va. Code Ann. § 715 (1949).